

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**4 IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION**

CIVIL ACTION NUMBER:

19-md-02875-RBK-KMW

MOTION TO COMPEL VIA
REMOTE ZOOM VIDEOCONFERENCE
SEALED TRANSCRIPT

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
September 10, 2021
Commencing at 3:00 p.m.

B E F O R E:

THE HONORABLE THOMAS I. VANASKIE (RET.)
SPECIAL MASTER

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1 (PROCEEDINGS held via remote Zoom videoconference before The
2 Honorable Thomas I. Vanaskie, (Ret.), Special Master, at 3:00
3 p.m.)

4 JUDGE VANASKIE: We will proceed. You know the drill.
5 Please mute your mic if you're not speaking. And don't put
6 yourselves on hold if you're participating only by phone and
7 then try to come back.

8 MR. SLATER: Unless there's good music in the
9 background.

10 JUDGE VANASKIE: There never is.

11 All right. So we have the plaintiffs' motion to compel.
12 I have a question, and it's a question that is a little bit --
13 I looked but I have to ask this questions: Was a reply brief
14 filed?

15 MR. SLATER: No, Your Honor. There was some follow up
16 in our agenda letter for the last conference but that was it.

17 JUDGE VANASKIE: I wanted to make sure I did not miss
18 anything.

19 MR. SLATER: Well, if you missed it, then I missed it,
20 which would be interesting.

21 JUDGE VANASKIE: Yes. All right. I think the best
22 way to proceed today is to go over some matters item by item.
23 And I don't necessarily want to say there's anything
24 significant to the order that I'm going to proceed in and I
25 want to make sure that we hit all of the items that are there.

1 Now, I thought I understood from the briefs that ZHP was
2 going to make additional production of document retention
3 policies. Did I misunderstand that or is that in the works?
4 What's going on there?

5 MS. PRISELAC: Hello, Your Honor.

6 Yes. We have made an additional production that
7 includes the document retention policies that plaintiffs cited
8 in their brief. It's a little bit like a needle in the
9 haystack process trying to find the additional ones. I spoke
10 to my colleagues today. They think by the end of next week
11 everything else will be produced that we have.

12 Just so Your Honor understands, you know, initially, the
13 document retention policies that we produced were ones that
14 were related to specific SOP's that were also ordered produced,
15 so what we're doing is going back and finding something that's
16 even broader so that we can just end this dispute.

17 JUDGE VANASKIE: Okay. All right.

18 Mr. Slater?

19 MR. SLATER: It sounds like we should wait until the
20 end of next week to see what we get.

21 JUDGE VANASKIE: Okay, very well. That's what we
22 shall do.

23 Now, one of the big issues here deals with production of
24 litigation hold letters or hold notices.

25 I'm struggling to find their -- what do you have in

1 terms of evidence that there has been a failure to follow
2 litigation holds?

3 MR. SLATER: Your Honor, a couple of things that I
4 think are recent examples here.

5 Number one, we have Jinsheng Lin, who obviously wrote an
6 important email and was involved in some important work who we
7 know did not get a litigation hold letter, and we've provided
8 Your Honor some charts in our brief which I hope are helpful
9 showing us that despite Dr. Lin being employed by ZHP starting
10 in July 2012, and despite the date of the email that we've all
11 talked about quite a bit in July 2017, the first date of any
12 document they produced as his custodial file is January 13,
13 2018. And that's obviously very concerning.

14 And just to anticipate a question that may come, defense
15 counsel had previously confirmed that if a document had
16 previously been produced, it wouldn't be produced again. But
17 as Your Honor knows, duplicate custodian fields were not
18 populated so there's no way to know if a document was in a
19 custodian's file if that custodian is not listed as a duplicate
20 custodian.

21 So Jinsheng Lin is a good example. I think that Baohua
22 Chen and the rest of these witnesses are good examples because
23 what you can see is a pervasive pattern of documents being
24 produced with the first date produced for any of the custodial
25 file being in 2018, mostly later in 2013 or in some cases later

1 in 2018 -- if I said 2013, I misspoke, 2018. So we have a
2 pattern that on its face indicates that there should be more
3 documents than there are not.

4 I'll give you another example. The ESI protocol
5 required that any smartphone that was used at all for business,
6 whether it was company issued or not is not the issue in the
7 ESI protocol, needed to be collected, swept and have the
8 responsive ESI provided, and we've provided Your Honor
9 testimony from multiple witnesses who said nobody ever asked
10 for their smartphones and that they did from time to time use
11 their smartphones for work. So that's another example of
12 something that we know is a violation and we know that we
13 didn't get any of those documents because it was just that they
14 were never collected, their smartphones.

15 JUDGE VANASKIE: Right.

16 MR. SLATER: So, you know, so the lack of litigation
17 holds to most multiple people, we know the smartphones weren't
18 looked at, and on its face, the documents that were produced
19 are in such small numbers and for a time period that starts so
20 late that on its face it raises very serious questions. And we
21 obviously don't have to prove spoliation. I think we have to
22 make a prima facie showing that things were not saved that
23 should have been or haven't been produced or can't be found
24 that should be.

25 So I think when you put that together, it creates a

1 picture that I think under these circumstances would require
2 the Court, at the very least, to take the first step of looking
3 at the holds *in camera* to determine whether, in Your Honor's
4 judgment, there is something in there that is probative to
5 what's been happening here. For example, what did the
6 litigation holds tell people to save or not save? We just
7 don't have that information. And, again, the fact that we know
8 that the litigation holds did not go to people that turned out
9 to be relevant creates very serious concerns and we would like
10 to be able to see what the litigation holds told people to do
11 at which periods of time because they could have evolved. So
12 we don't know.

13 So, again, a halfway point might be, if Your Honor has
14 any questions, for Your Honor to look at the lit holds and
15 determine whether you think they should be produced, which is
16 something we would certainly agree with.

17 JUDGE VANASKIE: All right. Ms. Priselac? You're
18 actually muted now.

19 MS. PRISELAC: My apologies, Your Honor.

20 JUDGE VANASKIE: That's okay.

21 MS. PRISELAC: So I think you asked the precisely
22 correct question, which is, what evidence is there of
23 spoliation, and Mr. Slater has listed for you zero.

24 And I'll start with his first point, which is that there
25 were a certain number of documents that they believed had low

1 hit counts for the custodians. They commented in their
2 briefing that they thought there might be a problem with the
3 metadata rather than having a meet and confer with us about
4 whether there was a problem with the metadata. And so we went
5 back and, as we said in our brief, we asked our vendor to see
6 if there were some issues with the metadata.

7 Now, Your Honor, if you go back, you know, we've
8 produced over 370,000 documents. And if I could go back to
9 about this point last year, and I am glad Mr. Parekh is on the
10 phone today, you know, technical issues like a metadata
11 overlay, especially in a case here where we have a company in
12 China, we have a company in the U.S., we have two subsidiaries
13 in China, getting all this documentation together, the metadata
14 right, de-duplicating everything, which, by the way, isn't just
15 what the defendants wanted, it was what the plaintiffs wanted
16 because it helps them do their review, but in any event,
17 metadata and these overlays in terms of duplicate custodians
18 gets very complicated because the ZHP parties are four -- or,
19 excuse me, four different companies. We also have two
20 subsidiaries that have productions.

21 So what we did is we went back, we corrected the
22 metadata, we produced a new overlay. And if Your Honor's
23 interested in seeing, we do have an updated chart that shows
24 that after we produced the metadata overlay, the numbers did go
25 up, including for Mr. Chen and Mr. Lin. And not that the

1 actual number of documents was higher, Your Honor, it's that
2 the metadata to do an easy count of the documents was
3 corrected.

4 Now, if they had just searched for their names or their
5 email addresses in the production, they certainly could have
6 gotten these same counts. But we understand the ESI protocol
7 is there for a reason so we corrected the metadata. And if you
8 want to see that chart, Your Honor, I'm happy to share my
9 screen.

10 JUDGE VANASKIE: Yes, I would like to see that,
11 please.

12 MS. PRISELAC: I think I might be disabled, Your
13 Honor.

14 THE COURT: Larry, are you on? Do we need to enable
15 Ms. Priselac to share screen? Larry, are you there? He must
16 have stepped away. Okay.

17 MS. PRISELAC: Your Honor, I don't want to hold this
18 up. I'm happy to produce it to you and to the plaintiffs after
19 the hearing. But what I will say is that, you know, Mr. Chen's
20 number of documents did go up to over 600 documents and his
21 earliest document now that the duplicate custodian overlay has
22 been produced dates to 2010. So this idea that we're only
23 getting information from 2018 is just not true.

24 Also accounted for now in this metadata overlay is the
25 document they specifically referenced in their motion, which is

1 ZHP 02490581, and that document now has the correct metadata
2 overlay.

3 So, again, Your Honor, first of all, this isn't an issue
4 of these documents weren't previously produced; it's that the
5 metadata was not complete. And so we're saying, yes, that's
6 true, and, you know, that was our mistake, but it's been
7 corrected now. And what the metadata shows and what they could
8 have done by doing a simple search of the actual documents
9 rather than the metadata is that there are documents way before
10 2010, including from Mr. Chen, that were produced months ago.
11 That's one point, Your Honor.

12 The other is that in terms of Jinsheng Lin and his
13 documents, the updated count shows that about a thousand
14 documents were produced for Mr. Lin, and if you look at
15 Exhibits 14, 15 and 16 of the plaintiffs' motion, you'll see
16 that they even have Mr. Lin's handwritten notebooks about this
17 Irbesartan Improvement Project. And so the idea that somehow
18 Mr. Lin's documents have been lost or spoliated, there's just
19 absolutely no evidence of that.

20 And I think, Your Honor, one of the things we have to
21 remember is that ZHP approved this process that's at issue for
22 making valsartan in 2011, and then that process was submitted
23 to the FDA in 2013. So the idea that, you know, Mr. Lin --
24 excuse me, Jinsheng Lin, who was not involved in that process
25 of developing these methods, should have more than a thousand

1 documents is just -- it doesn't jive with the facts. Because
2 what's been testified to, including by Dr. Gu, is that a lot of
3 this process for the method of making valsartan was done by
4 Shanghai SynCores. And so it wasn't even done at ZHP, and
5 that's why Shanghai SynCores was a custodian who was collected
6 from.

7 So, in short, Your Honor, what CEMAT and Mr. Lin do
8 today in 2021 are very different from what Mr. Lin did back in
9 2010 or 2011 or 2012 because CEMAT didn't exist at ZHP until
10 2014. And by 2014, Your Honor, the method for making valsartan
11 had not already been developed, it had been submitted by the
12 FDA and approved. To the FDA. I'm sorry.

13 And then, Your Honor, finally, you know, I think you
14 made a good point about evidence of spoliation because in *Major*
15 *Tours*, which is what the plaintiffs have relied on here, Judge
16 Schneider found evidence of spoliation because two of the
17 witnesses, corporate designees, made it very clear in their
18 testimony they did not adhere to the legal holds. None of our
19 witnesses have testified to that.

20 JUDGE VANASKIE: Can you respond to the suggestion
21 from Mr. Slater that I conduct an *in camera* review of the
22 litigation hold letters?

23 MS. PRISELAC: Sure, Your Honor -- I'm sorry if you're
24 getting a little feedback. Okay.

25 You know, we have no problem on one level with the

1 actual content of our letters. And, in fact, we've even
2 disclosed who they went to and on what days, which is in
3 Exhibit 29 in the plaintiffs' motion.

4 The problem we have, Your Honor, is that a process like
5 that should not occur unless there's a finding of -- at least
6 preliminarily of spoliation. And the problem here is, you
7 know, knowing the history of this case and of the plaintiffs, I
8 can see that the next moment here is, well, Your Honor already
9 found evidence of spoliation, if that's what we take -- if
10 that's the route we go down.

11 JUDGE VANASKIE: Could I ask you to now share your
12 screen so I could look at those charts.

13 MS. PRISELAC: Yes.

14 JUDGE VANASKIE: I'm informed that you have that
15 ability now.

16 MS. PRISELAC: Okay, great.

17 JUDGE VANASKIE: When I look at it, will I be able to
18 compare it against the chart that was in plaintiff's brief?

19 MS. PRISELAC: Yes, Your Honor, I believe that you
20 should now.

21 If you see, Your Honor, we have what plaintiffs had
22 originally had in their brief on the left and ours on the
23 right. And I did want to highlight for Your Honor, because we
24 had communicated this to plaintiffs but I don't think it was
25 obvious in the briefing, that Wangwei Chen and Peng Liu were

1 two custodians who left ZHP before the litigation and before
2 the discovery of NDMA in valsartan. So their electronic files
3 were not -- their electronic email files, that is, were not
4 kept. Anything they did though in a lab notebook or that was
5 on a shared server was produced.

6 JUDGE VANASKIE: Okay. Thank you.

7 Mr. Slater, what would I be looking for in the
8 litigation hold letters in an *in camera* review?

9 MR. SLATER: I think that Your Honor would be looking
10 for is what were people told to do, what were they told to
11 preserve, why they were told to preserve it, and how they were
12 told to preserve it. And I'll circle back on, I think this
13 might be helpful, talking about Dr. Lin. Dr. Lin, obviously in
14 that email that we've talked about quite a bit, in a
15 matter-of-fact way says there's NDMA in valsartan, and it's
16 caused by the quenching process, very a matter of fact. There
17 is not one document that was produced yet in this litigation by
18 ZHP showing where that knowledge came from, showing anything
19 about that. It just pops out, out of nowhere, and we have no
20 other information about it. That, on its face, creates serious
21 questions and what we need to see is what were they telling
22 people at what time period -- time point so that we can figure
23 out, A, what should Dr. Lin have been told, for example, using
24 him as an example, and at what point in time, because we don't
25 even know at this point, I don't think, if or when he got a

1 litigation hold. It certainly wasn't in 2018 or 2019.

2 And I will parenthetically say counsel just represented
3 that there were two people who left the company before the
4 litigation or the discovery of NDMA in valsartan. I don't know
5 when they left the company, but, obviously, we have a document
6 that shows that there was knowledge of the NDMA in valsartan in
7 July 2017, so I don't know if they left before that email.

8 And, again, there's an open question of when was this known
9 before that because it's -- it's hard to imagine that somebody
10 could make a matter of fact statement like that out of the blue
11 without having some prior knowledge and a reason for saying it.

12 So, again, we're -- and that's really the nature of any
13 of these issues that the plaintiffs have both arms tied behind
14 their back, to a large extent, because we don't know what we
15 don't know, but I think that's what you would see and determine
16 whether there's something probative about it. It may be that
17 you look at these letters and say, there's nothing here that's
18 going to add anything to these questions.

19 And not that I want to bog down on this but counsel's
20 talking about what the overlay file shows and how the document
21 counts apparently increased. This is not what I'm being told.
22 I'm literally emailing with people on my team as we're doing
23 this argument, and we're not seeing updated counts, according
24 to what I'm told, and we're going to have to -- we're going to
25 have to go through it and we're going to have to see if we

1 agree. Because I'm literally emailing with Mr. Parekh and Mr.
2 Geddis and other people on my team while we're talking and
3 that's not the information that we're seeing.

4 So, you know, when did Jinsheng -- coming back to it,
5 what was Jinsheng Lin told to do, for example, when and if he
6 ever did get a litigation hold letter? What was Baohua Chen
7 told to preserve?

8 The document count that we have as of when we filed our
9 papers is incredibly small and incredibly suspicious, from our
10 perspective. Even 600 documents, if they're right, which we
11 have to see -- we don't know in whatever time period, I haven't
12 seen that. I'm being told by people they don't see that on my
13 team. Even with 600 documents, take that -- take that as
14 Gospel for the purpose of this argument, that's still a
15 woefully small number of documents for the chairman of the
16 company who was involved with this -- the oversight of this
17 process throughout.

18 So, that's what I think you would find. And, again, I
19 don't know what the litigation hold letter says so I can't tell
20 you that there may -- there may be other things in there. I'm
21 just trying to make sure that we have all the information we
22 need as we go through this process because we're -- we're
23 convinced based on the circumstantial evidence and the hard
24 evidence of what that email said in 2017 that there has to be
25 more documents and they have to be significant and we just

1 don't have them.

2 And that's the best we can say at this point because we
3 just don't have other smoking guns. We have one, and we have
4 very low document counts and documents beginning very late in
5 the process, based on the information that we had when we filed
6 these papers and that I'm told remain accurate but maybe
7 there'll have to be a meet and confer, I don't know.

8 JUDGE VANASKIE: Ms. Priselac?

9 MS. PRISELAC: Sure, Your Honor.

10 So first to address the Baohua Chen issue, I think Your
11 Honor is more than familiar with the many declarations and
12 other things we submitted to the effect that Mr. Chen actually
13 had zero involvement in the development of valsartan and, you
14 know, the process by which the zinc chloride process came about
15 and in marketing or anything that really relates to this -- to
16 what would have been a responsive document. And we've all --
17 you know, it was not his practice to use email.

18 And so at the end of the day, the fact that there are
19 only around 600 documents from his custodial file is completely
20 consistent with what we've been saying about Mr. Chen's role in
21 the key issues of this case, which are the zinc chloride
22 process and the development thereof, you know, back in 2011,
23 2012 and 2013 and 2014.

24 So putting that aside though, Your Honor, I'm glad that
25 Mr. Slater brought up this Jinsheng Lin email, because if you

1 look at this list, a lot of the people with lower document
2 counts are people that were added as part of the supplemental
3 production as additional custodians. And the reason they were
4 additional custodians and not original custodians is because
5 they didn't have anything to do with the process of developing
6 valsartan. We voluntarily agreed to add them as custodians in
7 order to put this issue to bed and for no other reason. And
8 the documents show that they weren't involved in those
9 processes back in 2011, 2012, and that time period, in
10 developing valsartan.

11 What they do show is that they were involved in
12 different experiments, some of them at CEMAT, that the
13 plaintiffs wanted additional information about, most of which
14 involve valsartan -- excuse me, irbesartan, and we've given
15 them those documents. But these -- these additional custodians
16 weren't on the original list for a reason.

17 Your Honor, my colleagues at Duane Morris spent hours
18 with the plaintiffs in multiple meet and confers, including
19 having Jun Du, the CEO and vice president, and the vice
20 chairman of ZHP, have an eight-hour, basically, interview about
21 all of these aspects and who was involved. And so these are --
22 the fact that some of these people have low document counts
23 should come as a surprise to no one because they were not
24 original custodians for a reason.

25 And then secondly, with the Jinsheng Lin email, the

1 reality is, and I will share my screen in a moment, the email
2 he's talking about was about this Irbesartan Improvement
3 Project, and now they have all of those documents. And the
4 statement he's made I'm very glad he brought up because if we
5 look at the actual email and its attachment, and I will share
6 my screen again, Your Honor --

7 JUDGE VANASKIE: All right.

8 MR. SLATER: Your Honor, one question procedurally, if
9 we're going to do this, it would seem that maybe if documents
10 are going to be shared that they should be identified as
11 exhibits and circulated to counsel after these hearings. I
12 just realized that as we're talking because I think we should
13 have a record of what's shown and we may have to come back to
14 these documents on future hearings.

15 JUDGE VANASKIE: You are correct to request that. And
16 so let's start with the document that was shown to me first,
17 and that was the updated numbers comparing them with the
18 information that I have I think at Page 3 of the plaintiffs'
19 brief. We'll call that Hearing Exhibit A. We'll use letter
20 designations here if that's all right with everybody. And so
21 we'll mark that Hearing Exhibit A and I'll ask that it be
22 produced in hard copy as well.

23 (HEARING EXHIBIT A WAS MARKED FOR IDENTIFICATION.)

24 MR. SLATER: Thank you, Your Honor.

25 MS. PRISELAC: Thank you, Your Honor.

1 JUDGE VANASKIE: All right. And now did you want to
2 share your screen, Ms. Priselac?

3 MS. PRISELAC: Yes, Your Honor, thank you.

4 So, Your Honor, looking at what the plaintiffs have
5 previously marked, excuse me, ZHP 296, which is the Jinsheng
6 Lin email as they refer to it -- I'm sorry, I keep moving it --
7 you'll see that, you know, first of all, it's titled, you
8 know -- it's basically an investigation into irbesartan and
9 it's sent in 2017 and you'll see the attachment is marked
10 Valsartan Impurity K.

11 Now, Impurity K, Your Honor, in these APIs there's a
12 list of impurities that are called known impurities. And
13 they're lettered sequentially A, B, C, D, all the way through
14 up to and including K. So Valsartan Impurity K was an impurity
15 that was known to any maker of valsartan and to the FDA. And
16 what Jinsheng Lin -- and so when Mr. Slater says where could he
17 have come up with this idea that there might be a nitrosamine
18 in valsartan, and he acts as though he doesn't really -- he has
19 no idea what this attachment says or what the email says.

20 Well, actually, what Mr. Lin says in his email is that
21 he's attached a patent from a company called Zhejiang Second
22 Pharma, which, to clarify, Your Honor, has nothing to do with
23 Zhejiang Huahai. Zhejiang is like a province in China, so it's
24 like calling something New York --

25 JUDGE VANASKIE: Okay.

1 MS. PRISELAC: -- and not related to Zhejiang Huahai
2 whatsoever.

3 And so what does that patent say that could have, you
4 know, resulted in Mr. Lin saying this?

5 Well, the patent you'll see here, it was published in
6 2014; and if you look, Your Honor, what Zhejiang Second Pharma
7 here goes into and what Dr. Gu -- excuse me, Dr. Lin testified
8 to at -- well, Mr. Slater questioned him --

9 MR. SLATER: I didn't depose Mr. Lin, Dr. Lin.

10 MS. PRISELAC: I'm sorry. Dr. Li, I apologize, Dr.
11 Min Li, who was asked about this patent extensively by Mr.
12 Slater, what Dr. Li explained is that, you know, Impurity K was
13 a known impurity and that this was a patent that Zhejiang
14 Second Pharma filed with respect to Impurity K, but that this
15 was not something that Zhejiang Huahai, you know, agreed with,
16 and he certainly didn't agree with in his testimony that Mr.
17 Slater elicited from him.

18 So, basically, Your Honor, what this patent puts into
19 this possibility that there might be some type of nitroso
20 reaction related to Impurity K, but that has nothing to do with
21 some kind of widespread conspiracy at Zhejiang Huahai that
22 there was NDMA in valsartan. And it's really important here,
23 Your Honor, that none of this -- this patent doesn't say
24 anything about NDMA. It talks about nitroso compounds
25 generally.

1 So what I want to just clarify here is this email
2 doesn't say what Mr. Slater keeps saying it says. I mean,
3 every time we're in front of you he makes it sound as though
4 it's this long colloquy about everybody knows at ZHP that
5 there's NDMA in valsartan. That's not what the email says.
6 And when he asks you, we need to understand where this idea
7 came from, it came from the attachment. It's pretty obvious.
8 And so when they sit there and say we have no idea how he could
9 have come up with this, it's pretty -- it's there for them in
10 the attachment in black and white.

11 So why we wanted to have this confidential hearing
12 today, Your Honor, is so we could walk through the actual
13 document and this patent with you so that you could see that
14 this is not something that came out of nowhere. It was in the
15 attached patent of a company that has nothing to do with ZHP.

16 JUDGE VANASKIE: Now, for the record, what you had
17 shown to me appear to be slides where information has been --
18 on which information has been transposed, not the actual
19 documents. Is that accurate?

20 MS. PRISELAC: Yes, Your Honor, because I believe the
21 actual documents were submitted to you by Mr. Slater multiple
22 times. But I will -- I will happily resubmit them when I
23 submit the slides.

24 JUDGE VANASKIE: And can we mark those slides as
25 Exhibit B-1 through whatever you got to.

1 MS. PRISELAC: Yes.

2 JUDGE VANASKIE: Okay.

3 (HEARING EXHIBITS B-1 THROUGH B-5 WERE MARKED FOR
4 IDENTIFICATION.)

5 JUDGE VANASKIE: All right. Mr. Slater, any response?

6 MR. SLATER: Yes, absolutely.

7 It's a little frustrating because what you just saw,
8 Your Honor, was a, unfortunately, a very misleading Power Point
9 and summary of that document, which you obviously have heard us
10 go through many times and you've seen the testimony from Min
11 Li. So what counsel just did is said, first of all, she's
12 showing you the actual document. I wrote it down and put
13 quotes around it. It's not the actual document. What it is is
14 a very, very carefully rigged-up set of Power Point slides to
15 misrepresent the part that matters.

16 So the part that matters the most is the part that was
17 not shown to you, where Dr. Lin is saying we found an impurity
18 that looks just like or similar to the NDMA that is in
19 valsartan and which is created by the sodium nitrite quenching.
20 That's the sentence that matters. It's not the sentence you
21 were shown.

22 Later in the email he pointed out the patent from this
23 other Chinese manufacturer and said, they had figured out that
24 the sodium azide quenching can create this nitrosamine. So
25 people are catching on to this, so leaders of the company, and

1 I'm paraphrasing, it's pretty close though, beware and be
2 careful. He also said this was going to be potentially a
3 massive cGMP problem.

4 But coming back to it, what counsel didn't show you is
5 the one sentence that's most important. Why was that and why
6 was it represented that the email was talking only about the
7 patent? I don't know, it's distressing. And if you want to,
8 Your Honor, we could hold a whole hearing on this. We can walk
9 through the document and we can do whatever we need to do
10 because I'm really, really taken aback and surprised at what
11 just happened.

12 The email was not focused on the patent. The patent was
13 used to illustrate that other companies out there were aware of
14 this problem so we better watch ourselves because we already
15 have this problem in our valsartan. And that's what it is and
16 I stand by that. And if you need us to, we can pull up the Min
17 Li testimony where I asked him questions about what the
18 document said and he confirmed the language, but you've seen
19 it, many times. So that kind of just took me aback. I'm a
20 little bit surprised at what was just presented to the Court.

21 What else can I tell you about what was just said by
22 counsel? Counsel said it was not Mr. Chen's practice to use
23 email. That's -- okay, well, that makes Maggie Kong that much
24 more important and probably whoever was in Maggie Kong's
25 position in the prior years, if she was handling his emails for

1 him. It shows you why it's so much more important to get those
2 documents.

3 Number two, the Jun Du meeting you heard about, Your
4 Honor, I'm telling you this because things were being thrown at
5 you that you weren't the Special Master at the time, it
6 predated you.

7 JUDGE VANASKIE: Right.

8 MR. SLATER: We had to get a court order from Judge
9 Schneider who sat in the room with us across the hall from his
10 chambers and he forced Jun Du to be brought to talk to us
11 informally to give us information on corporate organization so
12 we could figure out what was going on and learn about the
13 company and learn some terminology. So that's how that
14 happened. This was no offer by ZHP; it was Court ordered.

15 For some reason counsel seems to think that Jinsheng Lin
16 not being listed as a custodian initially is somehow favorable
17 to ZHP. That's a massive violation by them not disclosing his
18 existence to us and, as you know, we only learned about him and
19 his involvement by accident. Because, talking now, bringing
20 this back to the issues that are before Your Honor today, that
21 email is not in Jinsheng Lin's custodial file, the person who
22 wrote it, it's not in anybody else's custodial file for anybody
23 else that received it except one person, Min Li, and as you
24 know, we don't have the electronic version, we have a copy of
25 it that was then copied onto another computer and it says the

1 date created was in June of 2018 when that was really the date
2 it was copied, which is why we think we got it. That's why we
3 think it slipped through, because the metadata gave it the
4 wrong created date so it post-dated what we believe they were
5 holding back.

6 So the idea that Dr. Lin not being listed as a custodian
7 is somehow on us or is somehow exculpatory, he should have been
8 listed right up front because they had an obligation to do
9 their searches and talk to the company and to find out, and
10 they should have found out about this document. Again, we
11 don't believe they even knew the document had been produced, we
12 believe it was accidentally produced for the reasons we've
13 explained.

14 So I hope that -- I tried to compartmentalize a little
15 of what I just heard because I think that when you hear these
16 explanations and then you hear, similar to the other day, you
17 know, this was hard, these people are in China, we had to
18 collect all these things, that's why they're still giving us
19 documents now and still trying to correct overlay files that
20 was all supposed to be taken care of over a year ago, that's,
21 again, a distressing fact.

22 But to the issue before the Court, Your Honor, the fact
23 that Jinsheng Lin, and this is one example I gave you, says in
24 July 2017 there's NDMA in valsartan, and accurately states the
25 root cause, it's due to the sodium nitrite quenching to get rid

1 of the azide, I mean, he literally sets forth not just that
2 there's NDMA there but why it's there, the root cause that was
3 admitted to the FDA when this came out, so it's hard to imagine
4 that he just came up with that that day. And there is not one
5 document within the company anywhere else documenting that
6 before that moment. Very hard to imagine. And I don't think
7 anybody would believe that that's the state of affairs.

8 So, again, I think that I tried to come up with a
9 halfway point, which would be, if we're just talking about,
10 we've gone into a bunch of other areas, but the lit holds --

11 JUDGE VANASKIE: Right.

12 MR. SLATER: -- I think there's no harm in it being
13 produced to Your Honor. If Your Honor looks at it and says,
14 look, there's nothing here that's going to be of any use or
15 relevance, you know, we'll abide by that, of course.

16 JUDGE VANASKIE: All right. Ms. Priselac?

17 MS. PRISELAC: Thank you, Your Honor. Just a few
18 things.

19 I find it interesting that Mr. Slater can, you know, go
20 on huge diatribes, impugn my client, using his own words, not
21 Dr. Lin's words. He has paraphrased this -- whatever he wants
22 this email to say in every hearing, it suits his purposes. He
23 never actually shows you the actual words. So the fact that
24 he's taken aback that I'm showing you the actual written words
25 I think speaks volumes because the written words actually

1 disprove all of his paraphrasing over all of these months,
2 which is why we wanted this hearing. So that's the first
3 thing. And we made that clear, by the way, when we asked for
4 this hearing, that we were going to walk through it. So the
5 fact that he's surprised and he's not ready to put his side up,
6 that's neither here nor there.

7 The second thing, he keeps saying, we should have been
8 told about Dr. Lin's involvement. Involvement in what?
9 Involvement in the Irbesartan Improvement Project? Well, first
10 of all, you have the head of the Irbesartan Improvement Project
11 as a custodian, his name is Dr. Min Li, you have him as a
12 custodian. And why would the Irbesartan Improvement Project be
13 related -- have put this on anyone's radar? It wouldn't. This
14 is a case about valsartan. Point blank, Dr. Lin was not
15 involved in the creation of the process by which valsartan is
16 made. People who were, were named custodians. So this idea
17 that he should have been named, he only should have been named
18 because Mr. Slater now thinks the Irbesartan Improvement
19 Project is important.

20 Now, in order to put this all to bed, we agreed to make
21 him a custodian and produce these documents but the idea that
22 he should have been disclosed in the first place has no factual
23 basis.

24 And the third thing, Your Honor, is, and this is really
25 important, and I would really love to hear from Mr. Slater,

1 they keep saying that we somehow, this metadata issue -- he
2 throws around metadata and overlays and should have been
3 produced and it slipped through, I still have no idea what this
4 theory is.

5 What really happened is we have an incredibly
6 comprehensive, very, very in-depth document collection review
7 process that we have gone to great lengths to produce every
8 document. So I actually want to know, instead of these kind of
9 vague conspiracies about metadata and slipping through, what
10 exactly is he accusing us of? Because I can't really combat
11 that unless he really says what he thinks happened.

12 MR. SLATER: Okay. And I will -- Ms. Priselac asked
13 me to do this. This is an email to me, I got it here in my
14 handy smartphone, my iPhone, the phrasing that matters which
15 counsel says, again, just doubled down and said, well, we
16 showed you what it said, the part that matters the most for
17 this argument is where it says, the email by Dr. Lin, "It is
18 very likely," talking about this impurity they found in
19 irbesartan, "It is very likely that it is an N-nitroso
20 compound. It is similar to the N-nitrosodimethylamine," that's
21 NDMA, "that occurs in valsartan when quenched with sodium
22 nitrite" -- I'll start over just to make sure it's clean.

23 JUDGE VANASKIE: Okay.

24 MR. SLATER: He says: "It is very likely that it is
25 an N-nitroso compound and it is similar to the

1 N-nitrosodimethylamine that occurs in valsartan when quenched
2 with sodium nitrate and its structure is very toxic." That's
3 the words. Those are the words we're talking about. This is
4 somebody, in 2017, clearly stating the root cause for the NDMA
5 in the valsartan and recognizing that it is in the valsartan.
6 That's -- I don't care if this is the context of the balloon
7 project to build a better balloon; it's the statement that's
8 made about their knowledge about this impurity in valsartan,
9 exactly the impurity and exactly the root cause that has now
10 been established unequivocally that's how it was caused.

11 So, again, I don't know why counsel doubled down on
12 that, it doesn't make any sense to me, and there's no way out
13 of that language. Again, counsel has never showed you the
14 language I just read to Your Honor today.

15 So where did that come from? Why did Jinsheng Lin not
16 get a litigation hold? Whatever counsel wants to say, there is
17 no doubt that that person should have been listed as a
18 custodian so that we would have had that person up front. And
19 how are they going to explain the fact that they didn't list
20 anybody, including Jinsheng Lin, as a duplicate custodian on
21 the document we got from Min Li's custodial file? It's because
22 it was never intended to be produced to us, and that's an issue
23 we're going to come to in a few moments in the context of
24 Baohua Chen, which is, counsel stated in -- it's Exhibit 3 to
25 our documents, July 22, 2021, email, that they didn't reproduce

1 documents that had previously been produced, that's fine but
2 you're supposed to and you are required by the ESI protocol to
3 list all the other recipients and anybody else that sent it,
4 anyone else that's on it, as duplicate custodians which was not
5 done.

6 So you look at that and that, from our perspective,
7 evidences a systematic effort to hide documents and the fact
8 that this one document slipped through and nothing else on that
9 is seen, nothing about why they knew this, it's been produced,
10 creates, I think, a very strong inference of somebody on behalf
11 of ZHP making sure that documents were not getting to us,
12 whether -- and I'm not guessing at who it was. We know that
13 the review of documents initially is done by law firms in
14 China, it's my understanding. They review everything, they
15 work with the witnesses, they work with the custodians, they
16 look for privilege, they look for state secret, they're working
17 with the documents, my understanding is, before Duane Morris
18 gets them, I assume. That could be corrected. That would be a
19 benefit to Duane Morris because it potentially would push the
20 responsibility for this to the law firms in China.

21 This is a very troubling area. Thank goodness this
22 document slipped through and we're trying to get to the bottom
23 of it to push that timeline as far back as we can to when they
24 knew, as I just read from Dr. Lin's email, that there is NDMA
25 in valsartan and it occurs when it's quenched with sodium

1 nitrate because they knew it because he said it clearly.

2 MS. PRISELAC: Your Honor, may I respond?

3 JUDGE VANASKIE: Yes, you may.

4 MS. PRISELAC: Thank you.

5 You know, stepping aside from Mr. Slater's unsupported
6 accusations about law firms in China and, you know, Duane
7 Morris and our client, I just want to highlight that I just
8 asked Mr. Slater to break down this theory of his about
9 metadata slipping through, you know, in their brief there were
10 allusions to a broken laptop and how this was all part of some
11 conspiracy in very vague terms that I didn't understand when I
12 read the brief and I still didn't hear an explanation that made
13 any sense whatsoever from Mr. Slater. Again, it's just these
14 vague generalizations that are actually not supported by the
15 facts. And, Your Honor, when we do submit these slides to you,
16 I'm more than happy to submit all of ZHP 296 and all of ZHP 297
17 because you're going to see, it's a long document with one
18 sentence and a one sentence that directly relates to the
19 attached patent. And I'll leave it at that because right now
20 we're not here to argue about the merits; we're here on a
21 motion to compel. And the reality is, Mr. Slater has
22 absolutely zero evidence of spoliation.

23 What he does have, actually, is an incredible amount of
24 data that we produced to him to show the lengths, even before
25 this litigation, that Dr. Min Li went through to save the old

1 laptop data and put it on his new laptop and all of that has
2 been produced. So this idea that there's some conspiracy to
3 withhold documents just has no basis in fact. And so if we're
4 going to start implying spoliation on that kind of conjecture,
5 that's a very dangerous road to head down, Your Honor.

6 MR. SLATER: Your Honor --

7 JUDGE VANASKIE: Let me ask a question of Ms.
8 Priselac, please.

9 Don't you find it a little concerning that this -- and I
10 realize it must be a lengthy document, and I haven't read it,
11 but don't you find it a little concerning that this email
12 didn't appear in any other of the custodians' productions even
13 though they were recipients of it?

14 MS. PRISELAC: So, Your Honor, Mr. Slater did ask some
15 of the other custodians that he deposed about this, and, you
16 know, I can take -- I can only take them by their testimony,
17 which is to say, if it didn't really relate to them or
18 something that they were supposed to keep, they didn't keep it;
19 they deleted it.

20 Now, I will tell you, Your Honor, even though the actual
21 email doesn't exist, and I believe that on one of our hearings
22 they admitted to this, all of these lab notebooks and the
23 contemporaneous data in terms of how they work as scientists,
24 which is these handwritten notes with printouts scanned and
25 kept in hard-copy files, some of which were actually attached

1 to the plaintiffs' motion, that's how they work as scientists.
2 They are keeping these hard-copy lab notebooks with some
3 electronic data printed out and put in the notebook and that's
4 their system. Because, Your Honor, quite frankly, when the FDA
5 comes, they have to show all of their hard-copy backups and
6 systems. You know, they're not doing email searches. So their
7 focus in terms of document retention is that.

8 And, you know, even though this email was not kept by
9 all of these custodians, the underlying data about the actual
10 -- about the actual project itself and these tests were given
11 -- was kept, was given to the plaintiffs, and they have it.

12 JUDGE VANASKIE: How would you be prejudiced, you,
13 talking in terms of ZHP, if I was to order production of the
14 litigation hold letters?

15 MS. PRISELAC: Well, Your Honor, I mean, under the law
16 it means that you have found a preliminary finding of
17 spoliation, and I think that's incredibly prejudicial to our
18 client.

19 MR. SLATER: I don't want to interrupt. I'm sorry.

20 JUDGE VANASKIE: Now, I did think I heard you say that
21 others who may have received that email didn't view it as
22 important and deleted it. I guess that would have all occurred
23 prior to litigation.

24 MS. PRISELAC: Right, Your Honor, because that email's
25 dated in 2017.

1 JUDGE VANASKIE: Right.

2 MR. SLATER: Okay.

3 JUDGE VANASKIE: All right.

4 MR. SLATER: Counsel has just represented some things
5 which are very interesting and they're revelatory, to some
6 extent.

7 First of all, counsel's saying that these documents --
8 I'll start with the last comment -- were deleted long before
9 the litigation. I don't know that. I don't know if counsel
10 knows that. In fact, counsel just represented that the email
11 was not kept by the custodians, other than Min Li, that they
12 all deleted it. No one's ever told us that, that they all
13 deleted it? We were told they didn't -- they weren't producing
14 it because it had already been produced from Min Li but they
15 didn't list the duplicate custodians. So that's very telling.

16 Counsel also said the actual email no longer exists.
17 They have a centralized server, if I recall correctly. How
18 does the actual email no longer exist? I mean, this is very
19 disturbing. And, again, I -- I didn't take every deposition.
20 I watched Ms. Hilton depose Jucai Ge, Jucai Ge, J-U-C-A-I and
21 then G-E, is the last name, the head of quality, the person who
22 would have been responsible to be up in arms over this because
23 Dr. Lin said this is a very serious cGMP situation. She
24 actually recalled the email but felt that, oh, this is for
25 other people to follow up on that are more -- that can figure

1 out if this poses a risk, so I didn't do anything because
2 nobody said do anything about it, when literally the email from
3 this Ph.D. expert that works for the company said this is a big
4 cGMP risk for us. So she was -- my recollection is she is the
5 only witness who actually admitted to remembering the email.
6 But, of course, it wasn't in her custodial file, she wasn't
7 listed as a duplicate custodian, but Your Honor just saw the
8 Power Point, there were like 11 or 12 recipients, I believe,
9 ten to 12 recipients. So this isn't just an offhand document.
10 This is the document that goes to the heart of the case.

11 And, again, counsel keeps doubling down and now saying
12 why should we be worried that everybody deleted this email.
13 Why should we be worried that the author of it wasn't given the
14 litigation hold letter? Why should we -- here's the question
15 for counsel which I would be interested, because I was asked
16 some questions, and I'm doing this rhetorically, because I
17 don't think it's appropriate for me to ask directly to counsel,
18 but what did Dr. Lin mean when he said there's NDMA in
19 valsartan when quenched with sodium nitrate? What is the
20 explanation from counsel for why Dr. Lin, almost a year before
21 the disclosure to the rest of the world, knew that there was
22 NDMA and knew exactly how it was being caused? It's a big
23 question. I'm curious the answer. Because there is no answer
24 other than he knew it because they figured it out and they knew
25 it. And it was his job to know that. That was his specific

1 job is to understand chemical reactions and to understand
2 impurities. He was the head of that department that looked
3 into impurities. So he was doing what he was supposed to do.

4 JUDGE VANASKIE: All right. Ms. Priselac?

5 MS. PRISELAC: May I respond because -- I wish we had
6 a realtime because the number of things that just aren't true
7 and things I didn't say are myriad. Okay.

8 So, first of all, Your Honor is an expert in electronic
9 discovery. Mr. Slater deposed many of these people and asked
10 them why it wasn't in their file. And so I'm not testifying or
11 representing anything new here. They all said if it wasn't in
12 my file, it must mean I deleted it. They didn't say they had a
13 recollection of it. That was the testimony.

14 Secondly, this idea -- and, you know, I would really
15 like -- I would really love it, Adam, if you could just
16 maintain a little composure when I'm trying to speak.

17 But the reality is these people have all been deposed
18 and they basically said, if it's not there, I don't know why,
19 maybe I deleted it. What I'm telling you, Your Honor, is that
20 we went back to check their custodial files, I never have
21 represented, ever, and none of my colleagues have, that this
22 was a duplicate custodian issue. We have never said that.
23 We've never said, oh, it should have been in a duplicate
24 custodian. I've never said that; none of my colleagues have
25 ever said that. What we did say is that we would go and look

1 for all this additional information that they requested.

2 And when he's talking about Jucai Ge remembering this
3 email and not doing anything about it, the part he's talking
4 about that talks about cGMP is related to irbesartan cGMPs for
5 this improvement project, and it's related to a process that
6 wasn't even in place yet. So the fact that Ms. Ge didn't think
7 it was important for her to keep, it's because she's in charge
8 of cGMPs of -- of cGMPs of processes that are actually in
9 place, not potential Irbesartan Improvement Projects. So this
10 idea that somehow Ms. Ge should have been worried about the
11 cGMPs of a process that's not even being used at Huahai doesn't
12 make any sense. And to say that Dr. Lin is in charge of all
13 impurities for all of Huahai, I don't know where that kind
14 of -- that kind of language comes from and I don't even know
15 what that means, to be frank, in terms of the scientific basis
16 for that.

17 When we're talking about what documents do exist, the
18 documents that do exist are myriad related to this project,
19 including contemporaneous handwritten lab experiments, and
20 they've all been given to Mr. Slater. So the idea that there
21 was some kind of effort to spoliate, when they've been given
22 all of that information, just makes absolutely no sense to me.
23 And that includes handwritten data from 2017 that is
24 contemporaneous with the actual project. And you haven't heard
25 Mr. Slater say he doesn't have that, because he does.

1 JUDGE VANASKIE: All right. We're going to have to
2 move on.

3 My concern right now is I'm not sure what production of
4 the litigation hold letters would accomplish. I'm very
5 concerned about the circumstances surrounding this particular
6 email, and I know, Ms. Priselac, that you have come up with
7 explanations for why it exists only, apparently, in one
8 instance and not in somebody's custodial file, but it is
9 troubling. But I'm going to come back to you, Mr. Slater, and
10 say, what purpose is served by production of the litigation
11 hold letters? I know I've asked you that question before but
12 I'm trying to get a better understanding.

13 MR. SLATER: We, again, we don't obviously know what
14 the letter said but I think it'd be helpful for us, for
15 example, to see the description of what the issues are -- the
16 description of the issues, to see what people were told to do,
17 and what to preserve and what not to preserve, so we could at
18 least understand what the company's understanding was of what
19 the reason was to preserve these documents and what people were
20 told to do with them.

21 Again, I don't know what the language in the litigation
22 hold is so I don't know if there's something that would be
23 incredibly helpful, but it would certainly let us understand
24 what the company did at each point in time to fulfill its legal
25 obligation to preserve relevant documents and information,

1 because now we're being told people were deleting emails. We
2 don't know when they deleted them. We're being told these
3 documents don't exist but don't worry about it any -- they
4 don't exist anymore but don't worry. We're being told we
5 should be happy that a document no longer exists in its
6 electronic form because somebody copied it from one computer
7 onto a laptop. None of these things give us any comfort.

8 So I don't have a great answer for Your Honor, and I'm
9 happy to admit that because it is what it is, but I think that
10 if you look at the litigation hold letters, we don't know
11 what's in there but, normally, they explain what should be
12 preserved, how it should be preserved, and why it should be
13 preserved. So that could shed a lot of light in terms of what
14 the company was telling its employees. And it may be that
15 you'll read those litigation hold letters and it will be clear
16 that what people were told to do was completely inadequate and
17 not in compliance with the legal obligation to preserve
18 documents in anticipation of litigation.

19 And remember, as counsel said, we don't know what that
20 trigger date is yet because that's a fact-sensitive inquiry
21 that's not being made.

22 JUDGE VANASKIE: Right.

23 MR. SLATER: But we have a strong argument, I think,
24 that when they knew there was NDMA in these pills and they knew
25 why it was being created that that would trigger their

1 obligation. And, again, we believe that a tremendous number of
2 documents and information has just not been provided to us
3 because of how damaging it would be.

4 JUDGE VANASKIE: Ms. Priselac, maybe you can
5 illuminate the question of the storage of emails at ZHP. What
6 I'm having trouble understanding is why this particular -- and
7 I know we're focused on one email right now but it is a
8 significant one -- why it would not have existed in electronic
9 format.

10 MS. PRISELAC: Sure, Your Honor.

11 And I, unfortunately, was not involved in the original
12 discussions that happened when Jun Du and my colleagues were
13 negotiating the ESI, but I have talked to them and been through
14 all of their notes, and what I understood is it was extensively
15 discussed where are ZHP systems and there is not a centralized
16 ZHP server. ZHP's email server is run by a third party. It
17 doesn't have massive archives and that type of thing.

18 Now, so, basically, Your Honor, if an email was saved,
19 it gets saved to like the personal laptop or the personal
20 desktop, and so all -- a lot of these documents that are so old
21 in terms of email were things that people downloaded from the
22 server and kept on their laptops. And so, like, for example,
23 ZHP can't go back to some archive from 2015 of all the emails.
24 That's not how their system is set up. So they basically are
25 using a third party and downloading their emails to their

1 system.

2 Now, in terms of -- you know, I want to make something
3 clear, though, because Mr. Slater just misstated a lot of
4 information, including the fact that this wasn't an electronic
5 document. This was an electronic document found on Min Li's
6 computer. So the idea that this was not an electronic
7 document, it was found through electronic purposes, it's an
8 electronic document on his laptop. And the fact that it was
9 produced and found, you know, and given to the plaintiffs shows
10 how transparent and how thorough ZHP's collection and
11 production is, including by looking through the old files of an
12 old laptop that was damaged, and it still got to the plaintiff.
13 So this idea that this email shows spoliation, it actual shows
14 the exact opposite.

15 And I will also say, Your Honor, this cover email about
16 a project that has detailed information in hard copy and
17 electronic copy that has been given to the plaintiffs, and the
18 fact that this one cover email, you know, isn't part -- is only
19 part with Dr. Li's production, the reality is that doesn't show
20 spoliation either because the actual project documents
21 themselves have all been produced to the plaintiffs and they do
22 exist. So the fact that they, quote, unquote, only got this
23 cover email from Dr. Li, it's wholly unremarkable given that in
24 terms of their actual work, they're all working through lab
25 notebooks and reports and that type of system, all of which the

1 plaintiffs now have.

2 JUDGE VANASKIE: Is it the case, Ms. Priselac, that
3 the documents would be reviewed by lawyers in China before you
4 all get to see them, Blank Rome gets to see them -- or not
5 Blank Rome, Duane Morris?

6 MS. PRISELAC: Sure. So, Your Honor, I'll try to walk
7 this line here of attorney-client and work-product privilege,
8 but I think it's no secret at this point that you know because
9 you're now an expert in the Chinese state secrets law, that
10 before anything comes to our -- to the United States, it has to
11 be cleared for state secrets by a Chinese attorney. So, yes,
12 in that sense, everything has to be looked at by a Chinese
13 attorney first.

14 JUDGE VANASKIE: Thanks. All right.

15 MR. SLATER: Your Honor, I don't want to delay
16 anything. This will take ten seconds.

17 I just want to note for the record, it was questioned as
18 to how I or why I thought Dr. Lin was responsible for
19 impurities? In a document produced by the company regarding
20 CEMAT, that's all caps, C-E-M-A-T, it says -- this is, I
21 believe, a Power Point presentation about that CEMAT unit --
22 says, "Jinsheng Lin specializes in genotoxic impurities for
23 CEMAT, the special teams of high-level scientists charged with
24 maintaining quality at ZHP." So that's where I came up with
25 it, their own document. This is exactly what he's supposed to

1 do is to identify impurities like NDMA. That's his job.

2 MS. PRISELAC: Your Honor, just to clarify, though,
3 and I think we put this in our brief, that level of -- that
4 kind of processing and coming up with knew APIs and optimizing
5 processes for APIs, that work is done at the beginning of the
6 process before the DMF is submitted to the FDA. So in this
7 case, Dr. Lin was not involved in that process nor was CEMAT.
8 It didn't exist when all of that happened. CEMAT existed 2014
9 and after when Dr. Li came to ZHP. All of this information,
10 all of the process and the risk assessments and coming up with
11 the zinc chloride process, that happened before 2011 and it was
12 finalized and submitted to the FDA in -- double-checking right
13 here -- December of -- I don't want to give you the wrong date
14 -- December of 2013. So that's before CEMAT even existed.

15 This idea that Dr. Lin should have been, you know, put
16 on a list because he would have been in charge of valsartan API
17 impurities is just not true. And also, the head of CEMAT, Dr.
18 Min Li, who is actually the head of CEMAT, was deposed and his
19 files were produced, which is why Mr. Slater has the email
20 we're talking about today.

21 JUDGE VANASKIE: All right. Thank you.

22 I don't want to make a finding of spoliation, I don't
23 think there's a sufficient evidentiary foundation for that at
24 this time. On the other hand, there seems to be enough to
25 proceed further with this inquiry. And so I would like to get

1 the litigation hold letters for *in camera* review. I'm not
2 making a finding that plaintiffs have made even a preliminary
3 showing of spoliation. The Colorel case, which I use in my law
4 school class, is one I'm familiar with, and I don't think that
5 you've gotten to that level. But that involved producing the
6 litigation hold letters to the other side, not for *in camera*
7 review. And I think that there's enough uncertainty here to
8 say I want to see what the litigation hold letter said in terms
9 of providing -- and, you know, I'm going to ask for an
10 explanation as to the individuals that were identified in the
11 plaintiffs' brief that did not receive litigation hold notices.
12 There were five or six individuals, as I recall. I thought it
13 would be revealed to me by the chart, which is Exhibit 29, but
14 it's not revealed to me by looking at the chart. But I would
15 like to find out why were they not included in the universe of
16 individuals that received the litigation hold letters.

17 Now, we've been going for over an hour, and I know we
18 haven't made a whole lot of progress yet, we've made some. I'm
19 going to direct that the litigation hold letters be produced
20 for *in camera* review. And I'll ask you, Ms. Priselac, how soon
21 can that be done?

22 MS. PRISELAC: Just because it takes our vendor a
23 little time -- well, actually, Your Honor, since it's just
24 going to you, I guess they don't have to be Bates labeled. So
25 I can get them to you -- can I get them to you Wednesday next

1 week?

2 JUDGE VANASKIE: Sure, that's really prompt.

3 MS. PRISELAC: We take -- I want to assure you, Your
4 Honor, they do exist and we took our duty to write them
5 seriously, so we do have access to them.

6 JUDGE VANASKIE: Okay, very well.

7 Now, I don't know if you heard but my dog says he needs
8 a break. So we're going to take a ten-minute recess at this
9 time. Thank you.

10 MS. PRISELAC: Thank you.

11 MR. SLATER: Thank you, Your Honor.

12 (Brief recess taken at 4:10 p.m.)

13 JUDGE VANASKIE: All right. Let's go to the next big
14 issue for me, and that is the Maggie Kong files, that is the
15 production issue there.

16 I understand that when you did a search for hits, and
17 correct me if I'm wrong on this, using the search terms, you
18 came up with 37,579 documents. Is that the total universe in
19 her custodial file?

20 MS. PRISELAC: That was with the search term hits,
21 Your Honor; but I will tell you that the responsiveness rate
22 from the Court-ordered search term hits is incredibly low.

23 JUDGE VANASKIE: Okay. That's encouraging.

24 MS. PRISELAC: So that's not unsurprising, given the
25 breadth of the search terms.

1 JUDGE VANASKIE: Also, of that 37,579 documents,
2 16,339 hit on privilege-related terms, as I understand it.

3 MS. PRISELAC: That's right.

4 JUDGE VANASKIE: So 43 percent are likely to be
5 privileged.

6 MS. PRISELAC: Correct.

7 JUDGE VANASKIE: And then from what you just said, as
8 I understand it, then you did a responsiveness review?

9 MS. PRISELAC: I will clarify that, Your Honor.

10 I just meant the overall responsiveness rate for the
11 entire litigation using those search terms is low. We have not
12 done -- I mean, our point of doing this collection then
13 applying the search terms was right to avoid the cost of having
14 to do a review because it is quite expensive, especially given
15 the state secret issues.

16 JUDGE VANASKIE: But you're asking that no further
17 production from Maggie Kong's file be ordered on
18 proportionality grounds?

19 MS. PRISELAC: Correct, Your Honor.

20 In particular, Your Honor, I don't think that the
21 plaintiffs have articulated what fact or what issue, and they
22 do point to meeting -- meeting minutes or meeting Outlook
23 invites that they want, but the testimony has shown, and we've
24 cited it in our briefs, so I won't go through it, you know,
25 it's not the standard practice at ZHP to use Outlook

1 invitations and the type, and they do have already quite a few
2 -- several meeting minutes from various departments. And what
3 I've not heard yet from the plaintiffs is what they hope to get
4 from Ms. Kong's files that they don't already have that is
5 actually relevant to the litigation.

6 JUDGE VANASKIE: All right. Well, let's hear from Mr.
7 Slater on that point then.

8 MR. SLATER: Thank you, Your Honor.

9 What do we hope to get from Maggie Kong's files is any
10 documents that are responsive and were hit by the search terms.
11 And we've just been told multiple times, and it's in the
12 briefing, that everything goes through Maggie Kong. The
13 explanation for Baohua Chen's facially, very troubling, very
14 low document count is, well, everything goes through Maggie
15 Kong.

16 Now, she did start in late 2017 so we'll have to put a
17 pin in what we're going to do about the prior period of time
18 and who was getting the emails that he should have been -- who
19 was getting the emails instead of Baohua Chen before that. But
20 she was his conduit to the world. Everything went through her,
21 she was interacting with other executives.

22 For example, Min Li said, all these meetings that took
23 place, when this came out through Novartis, in early June 2018
24 and Baohua Chen was conducting meetings, we were told there's
25 no emails about it, there's no paper calendars about it, just

1 Maggie Kong would come down the hall and tell everybody, well,
2 this is -- you know, we're having a meeting now. And that's
3 pretty -- I think a pretty accurate paraphrase of what the
4 testimony was, as strange as it sounds.

5 So she's obviously somebody who's working very closely
6 with very relevant witnesses, she's the conduit for Baohua
7 Chen, we should get her production. We should see what's
8 there. And I don't think that anything that we've heard
9 creates a serious proportionality issue which would outweigh
10 the need for these documents, especially as we're meandering
11 towards the deposition of Baohua Chen, being told there's
12 several hundred documents for him, but because everything goes
13 through Maggie Kong but we're not going to see the documents
14 she has, it would be, I think, very unfair. And if counsel --
15 if counsel wants to say they have to do a state secret review,
16 maybe they'll luck out like they did with Baohua Chen, which
17 I'm putting to the side for a second, where after we were told
18 for so long that he's going to have this big state secret
19 problem, and then it turned out there were zero documents that
20 were identified as state secret documents, we'll see, maybe
21 we'll -- maybe with Maggie Kong maybe there'll be none also, we
22 don't know, but it is what it is. There is certainly a
23 substantial number of documents that are potentially very
24 important and she was the conduit for Baohua Chen when all this
25 was breaking to the world.

1 JUDGE VANASKIE: All right. Ms. Priselac?

2 MS. PRISELAC: Sure, Your Honor. I'll take those
3 issues in turn.

4 First, because it really had nothing to do with Maggie
5 Kong but I think it's important to correct the record. When we
6 talked about Baohua Chen having a tremendous amount of
7 documents subject to the state secret laws, the issue is not
8 that all of those documents or any would be responsive to
9 plaintiffs' document request; the only point we were making is
10 that as a government official, he would have in his possession
11 quite a few state secret materials which requires a level of
12 review and a specialized reviewer who knows that law in China
13 to go through them. That was the burden we were talking about
14 with Baohua Chen. So this idea that the fact that he doesn't
15 have any additional responsive documents that were subject to
16 the state secret law is neither here nor there.

17 The second thing is, Your Honor, Mr. Slater just
18 explained why the evidence to date shows why Maggie Kong should
19 not be -- her file should not be ordered reviewed and produced.
20 All of the witnesses have said they don't use the kind of
21 electronic invite. She comes and gathers them up. Nobody has
22 stated otherwise. So the evidence is telling you that there
23 aren't any kind of meeting coordination emails. The testimony
24 says that and Mr. Slater admits it. So if that's what they're
25 looking for coordinating these meetings, it doesn't exist.

1 And, finally, Your Honor, I said that it wasn't -- I
2 said that it wasn't Mr. Chen's practice to use email. I didn't
3 say that everything for him goes through Ms. Kong. That's
4 never been represented. She's certainly his chief of staff and
5 certainly is organizing his meetings. I don't think I've ever
6 stated, and if I did, I did not intend to, that every email for
7 him goes through her. What I said is it's not his practice to
8 use email.

9 JUDGE VANASKIE: Okay.

10 MS. PRISELAC: And I will just also make it clear
11 here. You know, Your Honor, 2017 is when she started, but the
12 reality is that this litigation started not long after she
13 arrived. So it's really not shocking that a lot of these
14 search terms hit on her file. But what are the real issues
15 here, Your Honor, especially from 2017 on?

16 From 2017 and later, the real issues are, you know, when
17 Novartis, you know, found NDMA in valsartan API, what the
18 company did, talking to the FDA. You've heard not one thing
19 from Mr. Slater about documents that are deficient from that
20 time period, not one thing, because they're not. They're
21 extraordinarily robust already.

22 JUDGE VANASKIE: All right. Quick rebuttal, a brief
23 rebuttal, Mr. Slater.

24 MR. SLATER: Sure. Sure. This is the person who was
25 the chief of staff for the chairman of the company, was

1 interacting with high-level executives across the company, all
2 of whom that were involved in this process were interacting
3 with her, we would expect her emails and her documents and
4 maybe her handwritten notes and her handwritten calendars will
5 refer to what Mr. Chen said or Mr. Chen did or who else visited
6 with him, when they took place, that's the calendar part. But
7 there's -- we expect substantive information that will be in
8 her communications and her documents because of the role she
9 played and because if Mr. Chen's practice was not to use email,
10 she was doing it on his behalf, and that is in the papers.

11 JUDGE VANASKIE: What I haven't heard yet is that
12 there has been any review of Ms. Kong's files, of Ms. Kong's
13 emails, of Ms. Kong's handwritten notes, et cetera. Has
14 anything been done in that regard?

15 MS. PRISELAC: No, Your Honor, because when we made
16 this argument initially, you know, what we were arguing, it was
17 disproportionate and part of that is because of the costs that
18 we would incur by doing that. But, you know, the issue here is
19 in terms of the proportionality issue, we've gone round and
20 round with the plaintiffs. I mean, we've already expended a
21 huge amount of resources. To go back now and do this, when,
22 you know, Mr. Slater still has yet to articulate a reason
23 why -- notice he has not talked about any claim, any -- you
24 know, they have millions of pages of documents. By the way,
25 Maggie Kong is on a lot of them. So, you know, if there was

1 something specific, based on what they know Maggie Kong -- what
2 is in the production about Maggie Kong, that they wanted to
3 follow up on, you know, maybe they could meet their burden.
4 But as we sit here today, they haven't. And they should if --
5 I mean, there are plenty of documents they already have that
6 Maggie Kong is on. I haven't heard one thing specific about
7 why they need us to review even more of them.

8 JUDGE VANASKIE: Well, what could be done in terms of
9 an electronic review of Maggie Kong's files to make it more
10 efficient and expedite the review?

11 MS. PRISELAC: Well, Your Honor, I will be very frank
12 with you that the plaintiffs have put on us a very onerous set
13 of search terms but that we have followed the ESI protocol to
14 the T, so what they demand is incredibly time intensive and I
15 cannot think of a way that would actually expedite it at all.

16 JUDGE VANASKIE: Is there a different set of search
17 terms that could be run against the Maggie Kong custodial file
18 that could be more precise in what plaintiffs are looking for
19 and wouldn't require a review of thousands of documents?

20 MR. SLATER: Your Honor, the application of the search
21 terms, I -- when counsel suggests that the plaintiffs are
22 requiring the defendants to adhere, again, by way of history,
23 the search terms were agreed to by the parties.

24 JUDGE VANASKIE: I understand.

25 MR. SLATER: There's nothing onerous about applying

1 the search -- counsel seems -- look, if I'm forgetting that
2 they disputed a few of the search terms, and then Judge
3 Schneider ruled on them, there's an order that encompasses the
4 search terms, I believe, and I believe they were agreed to.

5 Anyway, the point being, the search terms are applied,
6 as Your Honor knows, electronically. It doesn't take a long
7 time to apply 400 search terms, a hundred search terms or five;
8 either way, it's a computer function. So the time-consuming
9 part is when counsel says they have to review for privilege,
10 and that's their choice. They can also have a -- they have
11 clawback rights, so they could also produce documents and have
12 the right to clawback if they want to do this quickly and save
13 time or money, but that should not be placed on us in terms of
14 being deprived of her custodial documents that are hit by the
15 search terms and are responsive. We should really have access
16 to this. There is nothing onerous about it, there is nothing
17 difficult about it, and we're going to be deposing the person
18 that she worked hand-in-hand with who we've been told doesn't
19 use email very much, so she's the person the emails were going
20 through. Again, we think it would be very prejudicial to not
21 see her custodial file when we're going to be deposing Mr. Chen
22 at some point.

23 JUDGE VANASKIE: All right. Ms. Priselac?

24 MS. PRISELAC: Your Honor, I'm sorry, but I'm having a
25 really hard time believing Mr. Slater can possibly forget the

1 months and months of motion practice and the fights that have
2 occurred about these search terms. It's actually shocking. It
3 went through rounds and rounds of briefing. I mean, we have
4 shown time and again to Judge Schneider incredibly low
5 responsiveness rate that these search terms have and they have
6 been an issue from day one. So the idea that they were agreed
7 upon on any way is just untrue.

8 Secondly, the responsiveness rate, and, Your Honor, if
9 you would like additional briefing on this, I'd be happy to do
10 it, shows what an incredible burden and how disproportionate
11 the request is here. I mean, it's going to require us to have
12 a review of 37,000 documents if they don't narrow those search
13 terms. 37,000 documents, privileged or not privileged, is a
14 huge amount of documents when we've already spent millions of
15 dollars doing this. And I've yet to hear from Mr. Slater why
16 he needs these. He already has a lot of documents from Maggie
17 Kong. If he thinks something's missing in there, tell me what
18 it is.

19 JUDGE VANASKIE: Well, it's a little bit hard to
20 identify what you think is missing.

21 MS. PRISELAC: Well --

22 JUDGE VANASKIE: I guess he's given us some
23 indication. You know, you don't see documentation concerning
24 scheduling meetings and things of that nature. We do know from
25 the evidence that has been presented thus far that there were

1 meetings, but it would be helpful, I would imagine, to know,
2 were they all the meetings, when were the meetings, where were
3 the meetings, who was invited to the meetings, things that you
4 would expect would occur electronically, but apparently they
5 don't have that. Now, correct me, I can see you're ready to
6 answer.

7 MS. PRISELAC: Well, yes, Your Honor, because I do
8 think Mr. Slater admitted this and we've cited all the
9 testimony in our briefs where, you know, let's be really clear,
10 this wasn't an issue that these witnesses know about, right,
11 Maggie Kong's custodial file. They're just asking a long
12 litany of things about how things work at ZHP and every single
13 one of them said, you know, this is not a by email set up a
14 meeting thing generally. It's just, you know, everybody, all
15 hands on deck, especially a lot of them are in close proximity,
16 that's what the testimony shows, that's what we've cited in our
17 brief. So the reality is all of the evidence to date shows
18 that that doesn't occur at ZHP.

19 Now, if -- you know, if it did, this wouldn't be as big
20 of an issue, and, quite frankly, he would probably already have
21 all of this information because if we look at the types of
22 meetings we're talking about, and what the defendants'
23 corporate witnesses testified to, those people's custodial
24 files have already been collected and produced.

25 JUDGE VANASKIE: Help me out on this once again. The

1 37,000 documents we're talking about, that's her entire
2 custodial file?

3 MS. PRISELAC: So the 37,000 documents that are search
4 term hits, Your Honor, because the way we do search term hits
5 --

6 JUDGE VANASKIE: Search term hits.

7 MS. PRISELAC: Let me be clear, too, Your Honor, I
8 don't want to give the impression that 37,000 documents are a
9 hit for one of these. It's inclusive of families, right,
10 because that's how you have to do a review.

11 JUDGE VANASKIE: Okay.

12 MS. PRISELAC: So even though they didn't hit on all
13 37,000, we would have to review all 37,000.

14 MR. SLATER: Your Honor, it's interesting, counsel
15 hasn't reviewed the documents. And I think the representation
16 is, I'm taking that as, no lawyer in the U.S. or China or
17 anywhere else has actually looked at her custodial file at all.
18 Okay? I find that hard to imagine but okay. Yet counsel's
19 making representations about what may or may not be in there
20 and guessing at it when the documents are in her possession and
21 control. So I think that that's -- it's very concerning for
22 counsel to make these arguments having not looked at the
23 documents.

24 Thirty-seven thousand documents with search term hits,
25 let's go beyond this because, again, counsel wants to focus --

1 and I think that when these meetings took place and who
2 attended are very important, but what about what was being
3 said? For example, emails, Chairman Chen wants you to do this,
4 Chairman Chen says to do this, attachments, documents being
5 sent around, her being copied on other documents. We need to
6 see this. She is literally his right hand and his mouthpiece
7 to the company and is interacting with people within the
8 company, and the fact that there's 37,000 documents with search
9 term hits, that just tells us how important it is for us to see
10 those documents because it's a significant amount.

11 MS. PRISELAC: Your Honor, may I clarify a technical
12 issue?

13 JUDGE VANASKIE: Sure.

14 MS. PRISELAC: Okay. So I think you probably remember
15 way back when we were talking about getting these lap -- these
16 air-gapped laptops because there's state secret information on
17 them.

18 JUDGE VANASKIE: Yes.

19 MS. PRISELAC: So one thing we can do with these
20 laptops is use kind of the data from the database to try to
21 de-duplicate, try to thread, try to cut that number down; but
22 because these documents are -- Mr. Chen and Ms. Kong's files,
23 because of the state secret issues and his position, are kind
24 of, at this point, unconnected to the Internet and unconnected
25 to the larger database. We can't do a complete, like,

1 custodial -- how do I say it? We can't do like a -- do a
2 complete de-duplication at this point, right, which is why all
3 37,000 have to be reviewed. So it's very possible that once
4 they're reviewed and exported and cleared to the U.S. there
5 would be some duplicates. So I don't want to give the
6 misimpression that some of these documents might already be in
7 the custodial file of others because they might. Because the
8 reality is, Your Honor, there are 83 custodian -- oh, actually,
9 I think we're up to 92 ZHP custodians. And the people Mr.
10 Slater is talking about rounding up for meetings are all
11 already custodians. So I don't want to give the misimpression
12 that these might not be in other people's, they might. But
13 because of the way our review has to happen, it would require
14 us to look at all 37,000 before we could export it to a
15 database to take out the duplicates and threading.

16 JUDGE VANASKIE: Anything else on this issue, Mr.
17 Slater?

18 MR. SLATER: Counsel said we might have some of the
19 documents. We need the documents, Your Honor. I don't -- I
20 can't imagine how it would be fair for us to have to depose
21 Baohua Chen without having her custodial file, in light of what
22 her role was and the fact that she's the conduit.

23 And I'll say one last thing. Counsel just said that the
24 plaintiffs know everybody that attended the meetings. No, we
25 don't. We know who we deposed and if they said they were at a

1 meeting or not. It would be very interesting if the documents
2 from Maggie Kong show that other people in the company actually
3 had an important role and we were never told about them; or
4 maybe there's documents in her custodial file that should have
5 been produced by other custodians and we didn't get them. We
6 already have a history of that.

7 So I really don't have much more to say other than I
8 think we've established the strong relevance of this witness
9 and her importance to preparing for the Chen deposition.

10 JUDGE VANASKIE: All I have right now is a number
11 count. I can infer from that the burden of review, but I also
12 know that Ms. Kong is in a very central position here in terms
13 of being the chief of staff, if you will, of Mr. Chen. And it
14 wouldn't be surprising that she would have documents of
15 interest.

16 I think you're going to have to review those documents.
17 I think it would be an error on my part to say, well, you were
18 told it's 37,000 documents, it will be a substantial
19 undertaking, but given the fact that Mr. Chen didn't use email
20 and you'd expect then that he would rely upon his chief of
21 staff as his go-between in communications suggests to me that
22 it should be reviewed. I would want a better evidentiary
23 foundation to say that the review need not be undertaken. All
24 I have right now is, as I said, a hit count.

25 I would encourage counsel to see, because of the

1 different role that Ms. Kong plays, that perhaps not all search
2 terms need to be run or that there is a narrowing search terms
3 -- I shouldn't say narrowing search terms -- a way to narrow or
4 limit the search in a way that still captures the important
5 documents that doesn't require review of 37,000 documents, but
6 absent that, I think you're going to have to review them.

7 And so I will order that, that that review be
8 undertaken.

9 MS. PRISELAC: Your Honor, this is probably a good
10 time to -- and we have to -- I want to be as transparent as
11 possible because we did brief this for Judge Kugler earlier
12 this week. There is a new law in China called the Data
13 Security Law whereby -- you've probably seen about it in the
14 *Wall Street Journal* and a lot of places, where the Chinese
15 government's latest position is that essentially that documents
16 cannot be left out of the country without -- cannot be allowed
17 out of the country without relevant government approval if it's
18 going -- if the purpose to do so is to be used in a foreign
19 litigation. Obviously that's created a lot of issues for not
20 just our clients but everyone operating in China. You know,
21 unfortunately, we seemed to be put as a little bit of a pawn in
22 what is going on in kind of the broader landscape of U.S./China
23 relations.

24 I have been told by our vendor -- because, obviously,
25 our vendor is FTI, very well respected in the U.S. and in

1 China, that, essentially, they don't even want to take the
2 liability at this point of continuing producing documents as a
3 vendor.

4 We're hoping that this is, obviously, not really tenable
5 for any court, right, in the United States that has a Chinese
6 litigant in the long-term. There were a lot of debates about
7 this law and, you know, there was a lot of hope it would not
8 actually go into force. My understanding from our Chinese
9 counsel is it did go into force September 1, and everyone's
10 been scrambling since then, including, you know, lawyers and
11 vendors, a lot of eDiscovery vendors.

12 Right now our vendor has put a stop on all export
13 because of the law. They're working very hard, our clients and
14 I know our vendor's counsel, to try to figure out what the --
15 what branch of the Chinese government needs to give you
16 permission to resume the export of documents. But I just want
17 to be very transparent with you that right now we're in a
18 really odd position that, quite frankly, in my career, Your
19 Honor, I've never faced, to be kind of caught up in something
20 much more geopolitical in nature, let's put it.

21 JUDGE VANASKIE: All right.

22 MR. SLATER: Your Honor, my view on that is, I think
23 that we ask for the Court to enter whatever orders Your Honor
24 is comfortable entering and then, you know, ZHP can take
25 whatever position they're going to take based on what they

1 think the law says, and then I think we go from there.

2 I don't -- I'm not a politician but if a country passes
3 a law that basically prevents every company within its borders
4 to export out the documents that would be needed to support
5 litigation in the United States, I would think it's going to
6 bleed into a bunch of other issues; but the consequences for
7 them as a litigation matter would be a subsequent issue to
8 address later.

9 JUDGE VANASKIE: Yes, I think it's not an issue for me
10 to decide. At this point I will enter, after I get the
11 transcript, an order that directs the production of Maggie
12 Kong's file, subject to withholding for privilege. I
13 understand this might be one of those issues that has to be
14 adjudicated.

15 I am disappointed -- I'm glad you were transparent, Ms.
16 Priselac, but maybe we should have started out with this issue
17 instead of having it coming up after I've made a decision. Of
18 course, if I made the other decision, it would be moot.

19 MS. PRISELAC: I didn't want to beat my own argument,
20 Your Honor, but I was fully intending on -- well, we've already
21 raised it in a brief with Judge Kugler and I was actually
22 hoping by today maybe we would have more -- or even while I'm
23 sitting here, a little more clarity about what our vendor
24 intends to do but I just don't.

25 And I just want to make it clear that this is not --

1 this is not what my client wants, I don't think it's what any
2 vendor wants, and I think that there are a lot of people, not
3 just my client, trying to figure out how they're going to
4 respond to this.

5 JUDGE VANASKIE: All right. Very well. We'll issue
6 an order. We understand that it may be something that is
7 superseded by the change in the law. I'm trying to get to my
8 next point here. I understand that it may be superseded by the
9 change in the law in China, but we'll go ahead and issue our
10 order and then you certainly will have the right to raise
11 whatever issues you have in terms of there being some
12 supervening, superseded change that precludes production.

13 Now, the next issue I was going to take up had to deal
14 with, maybe we've already covered it, the TC201729 issue that
15 is at Page 9 of the plaintiffs' brief, the heading on that
16 argument is "No new documents with the Search Term TC201729
17 have been produced," and the claim that the production there is
18 deficient.

19 Mr. Slater, did you want to add anything to what you've
20 already said in your brief?

21 MR. SLATER: Yes. I just want to make it very brief
22 so that our argument is clear.

23 All that was produced was a single draft of this report,
24 a hard copy that was produced as a .pdf when the document was
25 clearly created on a computer. So that's number one. So,

1 again, we have this issue. Because we want the metadata, we
2 want the notes, we want to see who made comments, we want to
3 see if there were edits made, we want to see all drafts, not
4 just one, because obviously there could be different versions
5 that different custodians or different people within the
6 company edited. So that's what we want. We want any and all
7 drafts of that report in native, with the metadata intact,
8 because it was supposed to be produced per the ESI protocol,
9 and then we'll go from there. That's the specific information
10 that we need. And Your Honor's obviously already ordered
11 production of the report, so we're just asking that we get the
12 report in an ESI-compliant form and that we get all versions of
13 the report, whether draft or final.

14 JUDGE VANASKIE: All right. Ms. Priselac?

15 MS. PRISELAC: Sure, Your Honor.

16 I'm just very confused because not in the briefing or
17 anywhere does Mr. Slater say any document is not in
18 ESI-compliant form. So if he wants to expand on that, I'd like
19 to know so I can counter it.

20 MR. SLATER: It was a document that was prepared on a
21 computer and we weren't provided it in the form that it was on
22 the computer. Instead it was printed, turned into a hard copy,
23 then .pdf'd and then produced to us.

24 MS. PRISELAC: What document are you talking about?

25 MR. SLATER: The draft report that was produced, the

1 single draft report that was produced that we're talking about
2 here.

3 MS. PRISELAC: I don't know what you're talking about.

4 MR. SLATER: The subject -- the subject that we were
5 discussing is the irbesartan draft report, irbesartan report,
6 and that's the TC201729, correct?

7 MS. PRISELAC: I will say this, Your Honor.

8 MR. SLATER: I'm not sure what the disconnect is.

9 MS. PRISELAC: I don't -- everything we've produced
10 has all of the relevant metadata, including like hard -- I will
11 say that all even the hard-copy documents go through a process
12 by which someone has to enter manually, right, where, like,
13 what room they've collected from, what person they've collected
14 from. So all the documents for this report, all of the search
15 term hits, all of the metadata have been produced. If there's
16 some specific document number that he thinks is missing
17 metadata, again, Your Honor, this is the kind of thing I would
18 hope they would just bring to our attention in a
19 meet-and-confer situation rather than in a brief. We've
20 produced everything is all -- there's nothing more I could say.

21 JUDGE VANASKIE: All right. And that's a perfectly
22 acceptable response.

23 Mr. Slater, I think the onus is on you to identify, by
24 Bates number or some other way, the document to which you're
25 referring so that it can be verified that it's produced without

1 metadata and that drafts haven't been produced and go from
2 there. But I -- go ahead, Mr. Slater.

3 MR. SLATER: I'm trying to understand what the
4 disconnect is here. Your Honor ordered the irbesartan -- I'm
5 going to call it the irbesartan report to be produced. What we
6 got was a single draft report that was printed and then .pdf'd
7 and then produced to us. That's not what the ESI protocol says
8 they're supposed to do. They're supposed to produce it in the
9 format that it existed on the computer. So we want it produced
10 in the format it was supposed to be; and if there are other
11 drafts as well, we would like them. If counsel says that's the
12 only draft, there's not much more we can do. But we just want
13 it produced in the manner which was required, that's all.

14 MS. PRISELAC: Your Honor, I still don't know which
15 document he's specifically referring to. And I'm happy to look
16 at the metadata but we did follow Your Honor's order, even not
17 just electronic data, we went back and got hard-copy data in
18 file rooms in China over many days and at great expense, Your
19 Honor. So I don't know what else we could possibly do.

20 JUDGE VANASKIE: Mr. Slater, let me ask this question:
21 The document that you're talking about, I take it that document
22 was not made an exhibit to the brief?

23 MR. SLATER: I don't believe so. It's in Chinese.

24 JUDGE VANASKIE: Okay.

25 MR. SLATER: But it's -- as we laid out on Page 9 of

1 our brief, Your Honor ordered that we be produced the documents
2 related to that code TC201729. As Your Honor knows, this goes
3 back to the evaluation that we were talking about with Jinsheng
4 Lin before. And what we got -- because remember the report
5 couldn't be located. We found it in some spreadsheet cell that
6 referred to it and it took a long time. Finally, counsel said,
7 oh, we produced the report. That's the report, it's the one
8 that exists, but it was a draft, it's a single draft and it was
9 not produced in the format it's supposed to be. It's not
10 supposed to be printed and then .pdf'd and then produced to us.
11 It's supposed to be produced to us in the form it was residing
12 on their computer system as it was.

13 So if they want to say there's no other drafts and
14 there's no other documents related to that, there is not much I
15 can say to that. But with regard to the document we got, we
16 would like it to be produced compliant with the protocol.

17 MS. PRISELAC: Again, Your Honor, it's very hard for
18 me to do this in a vacuum. This is why we have meet and
19 confers. So I am just representing to Your Honor that I had --
20 when this brief was filed, we went back to make sure every
21 single reference to this number had been produced. And,
22 actually, I think we found like two additional documents that
23 were maybe duplicates, and we even gave those to the plaintiff.
24 So I just am out of -- there's nothing else I can give.

25 JUDGE VANASKIE: The only thing I can suggest on this,

1 Mr. Slater, is that you provide some identification of the
2 document in question by, I'm using Bates numbers, I assume it
3 has a Bates number associated with it, so that Ms. Priselac can
4 look it up and then --

5 MR. SLATER: Let me look. I may have that, Your
6 Honor. I'm sorry, Your Honor, I may have it, because I'm
7 looking now at our brief and we actually listed three
8 exhibits --

9 JUDGE VANASKIE: Yes.

10 MR. SLATER: -- 14, 15 and 16, and I'm just going to
11 see -- it's Exhibit 14, Your Honor.

12 JUDGE VANASKIE: All right.

13 MR. SLATER: I just got an email from somebody much
14 smarter than I. So the document we're talking about is Exhibit
15 14.

16 MS. PRISELAC: So, Your Honor, I believe Exhibit 14 is
17 a document -- is like a hard-copy document. So the reason it
18 was scanned is because that's our protocol for when things are
19 kept in a file room, and I don't know how else you would
20 produce it to the plaintiffs unless you gave them the actual
21 piece of paper.

22 MR. SLATER: Well, it had to have been produced on a
23 computer. You're not saying someone handwrote this document.
24 So if someone didn't handwrite it, it was created on a --

25 MS. PRISELAC: Well, one of the documents is

1 handwritten.

2 MR. SLATER: Let me finish, please.

3 It had to have been created on a computer, unless the
4 representation -- this is a template. This is a computer
5 template. Look at the headers. This is a computer-generated
6 document. It should have been produced to us in the form on
7 which it was generated and maintained on the computer, not
8 printed, .pdf'd, and produced to us. That's what the ESI
9 protocol required.

10 MS. PRISELAC: Again, Your Honor, maybe I misstated.
11 I thought -- there is a handwritten report in there so I
12 thought that's what he was referring to. Again, I'm happy to
13 look at whatever number he's talking about and look at the
14 metadata.

15 JUDGE VANASKIE: Take a look at Exhibit 14. I'm
16 looking at it now, and it's clear to me it would have been
17 produced on a computer. And so there should be an ability to
18 produce it with the required metadata, et cetera.

19 MS. PRISELAC: Yes, Your Honor, I believe that it was
20 but I will certainly double-check.

21 JUDGE VANASKIE: All right. Mr. Slater, you're saying
22 it was not?

23 MR. SLATER: No, it was not. It was printed, .pdf'd,
24 and then produced to us.

25 JUDGE VANASKIE: Okay. All right. So I'll ask Ms.

1 Priselac to go back and take a look at this and see if you can
2 find out what happened and find out if the document, as it was
3 created, exists in electronic format with metadata, et cetera.

4 MS. PRISELAC: Sure, Your Honor.

5 JUDGE VANASKIE: Thank you.

6 MR. SLATER: Thank you.

7 MS. PRISELAC: Let me make sure, Exhibit 14, right?

8 MR. SLATER: Yes.

9 JUDGE VANASKIE: Exhibit 14.

10 MS. PRISELAC: Thank you, Your Honor.

11 JUDGE VANASKIE: All right. And it is Bates labeled
12 so you'll find it there, too.

13 MS. PRISELAC: Thank you.

14 JUDGE VANASKIE: All right. The next issue I have is
15 at the bottom of Page 9, and the heading is, "ZHP has not
16 produced documents allowing plaintiffs to determine whether it
17 has properly produced all of Min Li's and Hong Gu's documents
18 from broken devices as well as personal ones used for
19 ZHP-related business".

20 Mr. Slater?

21 MR. SLATER: I'll tell you where we're focused now for
22 this at this point.

23 The ESI protocol required any smartphone that was used
24 at all for company business, even if it was one email, one
25 text, whatever it was, to have been -- to have that information

1 produced to us. The testimony, as we laid out, we gave you
2 deposition excerpts from multiple witnesses, all said that
3 their phones, their smartphones were not collected and we've
4 established that there were witnesses that said they used their
5 phones, but they were not even collected and reviewed. So what
6 we're asking is for the ESI protocol to be complied with, for
7 all of the custodians' smartphones to be collected, reviewed,
8 and for us to get the responsive ESI from those smartphones.

9 JUDGE VANASKIE: All right. Ms. Priselac?

10 MS. PRISELAC: So, Your Honor, there's a couple
11 things. The first thing, and I think we've briefed this
12 extensively, and I'd love to hear Mr. Slater read what he
13 thinks in the ESI protocol requires us to do what he just said
14 because there's absolutely no requirement of that whatsoever.

15 And, Your Honor, the reality is, in November of 2020,
16 when our production was complete, there is quite a few ways
17 that the plaintiffs could have figured out if we had given
18 people personal data through very -- Mr. Parekh is on the
19 phone, I'm sure he's well aware, there's numerous technical
20 ways you could figure out if people have or haven't produced
21 cell phone data. So they've known this for quite some time
22 because it wasn't a requirement.

23 And the reality is the one time when we even discussed
24 personal emails and things of that sort with the plaintiffs,
25 and Mr. Parekh was on the line, and so was I, they asked for a

1 whole set of personal emails, including Jun Du and others, in
2 response -- after we had made our initial production. And we
3 voluntarily agreed to produce Mr. Du's personal email. But
4 what we were very clear about is that, you know, the burden for
5 collecting personal data of an individual who resides in China,
6 who is a Chinese citizen, is very different. And the first
7 thing they would have to do was try to serve Hague service on
8 that individual because we don't represent them in their
9 personal capacity and the law is very different. And that's --
10 and in January that whole issue was dropped.

11 So the idea that now, in September, this has become an
12 issue, when it could have been brought to the Court almost a
13 year ago when they had the vast majority of our production, and
14 they know that we have not done this and there was no basis to
15 order it, and, quite frankly, Your Honor, my client has no
16 control over these people's personal devices and would have
17 absolutely no way to compel them to produce this information.

18 And so I will just start with, Your Honor, that it's
19 very disturbing to me that Mr. Slater is mischaracterizing the
20 protocol to begin with because it just doesn't say that.

21 JUDGE VANASKIE: All right. Mr. Slater?

22 MR. SLATER: Yes. As quoted in our brief on Page 10,
23 the ESI protocol, and I believe it's on Page 2 of the ESI
24 protocol itself, required the production of all, quote, apps
25 (data from smartphone applications) used in the normal course

1 of business. So if they used -- Section 1A on Page 2 of the
2 ESI protocol, if a smartphone was used for any business, then
3 we were supposed to get the data that was in those apps that
4 was used to communicate on those smartphones. That's the ESI
5 protocol. All this Hague production, Hague service, subpoenas,
6 those are invalid objections. This has already been ordered by
7 the Court to be done for every single custodian.

8 MS. PRISELAC: Your Honor, it's absolutely not what
9 the ESI order says. And Your Honor, you know, can look -- Your
10 Honor can read it. What he's just cited is a definition of
11 what ESI could potentially encompass generally. What we've
12 cited in our brief, which is at Page 2 of the order, and it
13 says, "This list is neither exhaustive nor does it represent
14 that such ESI exists within the party's data sources or that it
15 will be produced." It's very clear that this is -- and then it
16 goes on to say that, "What the parties will do will meet and
17 confer regarding any disputes related to relevancy,
18 proportionality or production issues for submission to the
19 Court."

20 So it's really clear here, and what we did do, Your
21 Honor, is to have a meet and confer about potentially producing
22 these personal devices and we told them it's not possible, and
23 under Chinese law our client can't even make that happen. So
24 the idea that this was in the court order is just not true.

25 JUDGE VANASKIE: All right. Mr. Slater, is there any

1 brief rebuttal?

2 MR. SLATER: No, I don't think so. I think in light
3 of the time, I think I've said what I need to say. I think the
4 protocol clearly covers it.

5 JUDGE VANASKIE: I'll take a look again at the
6 protocol --

7 MR. SLATER: Thank you.

8 JUDGE VANASKIE: -- and make a determination on this
9 issue. If it's in the protocol, I'll order production; if it's
10 not in the protocol, I won't, recognizing, acknowledging that
11 there may be issues under Chinese law.

12 And I would ask counsel, I know you've cited to the new
13 law in a brief to Judge Kugler, I have not reviewed it, but I
14 would like to get a citation to that law from counsel so that I
15 can have a better understanding of the issue.

16 The next issue I have, and maybe the last issue, but
17 I'll give you certainly an opportunity to tell me there's --
18 maybe there's two issues here.

19 MS. PRISELAC: Your Honor, I'm sorry, can we go back
20 to that. If that is, you know -- we are liaison counsel. I
21 want to make something clear. You know, if this -- if Your
22 Honor's going to interpret the order that way, I do think that
23 we need to bring in all of the defendants who might have a
24 position because, Your Honor, this is not -- this is not how
25 anybody intended this ESI protocol to be interpreted; and the

1 idea that, you know, this much later it would suddenly mean
2 that would have an incredible affect not just on my client but
3 on every defendant in this litigation because that was
4 absolutely not the intent. I think it's very clear from the
5 plain reading of the order, but if that's how it's going to be
6 interpreted, I don't want to be in a position here where
7 something happens in here without the other defendants being
8 able to weigh in, if that was the way you were so inclined to
9 order. It's that --

10 JUDGE VANASKIE: So I won't issue an order on it yet
11 without giving other parties the opportunity to be heard on the
12 issue. I think that's prudent.

13 MR. SLATER: Your Honor, one thing, because I didn't
14 want to interrupt when counsel was talking, we filed our brief
15 on -- awhile ago, I don't have the signature date but it was
16 our initial brief, and the relief that we were asking for was
17 spelled out. So I don't understand how counsel can show up at
18 argument and say, well, now we want to ask for further briefing
19 on an issue that was fully briefed and we asked for this
20 relief -- I don't remember when this brief was filed, it was
21 weeks and weeks and weeks ago.

22 JUDGE VANASKIE: July 23rd.

23 MR. SLATER: Yes. So for counsel to show up now in
24 September and say, almost two months later, say, well, now we
25 want to let other people brief it, all counsel saw this. It

1 was available to all counsel. I would ask that Your Honor not
2 provide further time for briefing or intervention. We've asked
3 for this relief against ZHP. If someone asked for this relief
4 against another defendant later, that would be a -- then they
5 can address that issue. We're only seeking this against ZHP at
6 this time.

7 MS. PRISELAC: Well, and I am glad Mr. Slater said
8 that because I think that goes exactly to my point, Your Honor.
9 The reality is Mr. Slater is continuously trying to harass ZHP
10 with disproportionate requests. Your Honor, I understand that
11 -- I mean, but it is -- this is -- I think that one of the
12 reasons the larger defense group did not weigh in is because
13 the ESI order -- this is so far from what anyone intended, it
14 would be a complete shock to the rest of the defendants if this
15 was ordered. I mean, that's how far -- I, quite frankly,
16 thought that once I cited this, Mr. Slater would drop it. I
17 mean, this is -- this is -- I mean, Mr. Parekh's on the phone,
18 he can weigh in. This issue was brought up in January and it
19 was dropped.

20 JUDGE VANASKIE: All right. Mr. Parekh, you're on the
21 spot now. Are you there?

22 MR. PAREKH: I am, Your Honor. Unfortunately, I'm in
23 a place where I can't have the video on, but I apologize.

24 The discussion in January was primarily actually with
25 Ms. Hilton, although I was on the phone in the discussion. The

1 discussion revolved around specific email, personal email, and
2 how to get the personal emails, including ones used by Jun Du.
3 There was a compromise reached on those specific emails at
4 issue, and I believe the Gmail from Jun Du was being produced.
5 I don't have those details offhand. It was not a more general
6 issue with Fulcrum data and it was not discussed in the Fulcrum
7 data context at all. It was discussed solely in the form of
8 the use of personal email addresses.

9 JUDGE VANASKIE: All right. Thank you for that. And
10 I know there would be a dispute on that.

11 What I am going to do is to take a look at the protocol.
12 If the protocol, in my judgment, requires that cell phones be
13 reviewed and data from the cell phones produced, I'll order it.

14 You know, to me it would be surprising that that
15 significant source of data would be outside the scope of the
16 ESI protocol, but I will take a look at it.

17 MS. PRISELAC: Well, Your Honor, if I could weigh in,
18 because the ESI protocol was negotiated and I was part of that,
19 one of the reasons it was not in there is because of the number
20 of foreign entities, not just our client but a lot of the
21 defendants are foreign entities where, you know, the companies
22 don't have that power, right, the law is different in the U.S.
23 And so to put that in an ESI protocol that applied to everyone
24 was not something people could agree to. We would have never
25 agreed to it. This was an agreed-upon protocol. And we did

1 raise these issues so that if they got to the point where they
2 said, all right, well, we need the cell phone data from China,
3 then we would have that discussion and fight. It was not --
4 that's why it's not in there because it's not just our client,
5 it's people all over the world. European countries have an
6 even stricter data privacy law. So I'll just leave it at that,
7 Your Honor.

8 JUDGE VANASKIE: All right. Thank you.

9 The next issue I have starts at Page 11 of the
10 plaintiffs' brief, and it is ZHP has not produced the emails,
11 meeting minutes, and calendar invites related to meetings Min
12 Li attended with Mr. Chen.

13 And where does that stand? Where does that issue stand,
14 Mr. Slater?

15 MR. SLATER: Your Honor, as to the Min Li issue, we're
16 going to accept what the production is at this time.

17 JUDGE VANASKIE: Okay.

18 MR. SLATER: We don't think we have to push that any
19 further. We still have some concerns but I think in light of
20 all the other -- the gravity of the other issues, it's not
21 worth pursuing. And the same with Min Li. Although I don't
22 think any documents were produced, I assume counsel is saying
23 no such documents exist, because the two documents counsel
24 pointed to in their brief related only to Min Li, I believe.
25 But we're not going to pursue -- we're dropping this issue

1 based on counsel's representation that they've produced
2 everything that's responsive within this scope of this issue.

3 JUDGE VANASKIE: And what about the issue that ZHP has
4 not produced documents related to Min Li's meeting with
5 multinational companies?

6 MR. SLATER: That's what I'm talking about. That is
7 the entire topic.

8 JUDGE VANASKIE: Okay.

9 MR. SLATER: We're concerned about what we were
10 provided but we're trying to, believe it or not, not push every
11 issue.

12 JUDGE VANASKIE: Okay. And the last issue I have is
13 the production with respect to nitrosamine testing. Anything
14 else on that?

15 MR. SLATER: I think it's very straightforward. The
16 order of May 11 ordered the production of all the testing, not
17 just a chart collecting some information, the purported results
18 of the testing, but to the extent that testing was done, there
19 should be underlying documentation. And there was never any
20 order by the Court limiting production to USDMF, meaning
21 US-grade valsartan. In fact, that issue's been litigated,
22 we've prevailed on that. Judge Schneider's orders were very
23 clear that we get all the testing from the facilities that
24 manufactured valsartan and sold it in the U.S. So that's --
25 that's a distinction that's already been rejected by the Court

1 long ago.

2 JUDGE VANASKIE: Thank you.

3 Ms. Priselac?

4 MS. PRISELAC: Right, Mr. Slater just said, "and sold
5 in the U.S." And so, yes, he's right, only sold in the U.S.,
6 he just stated it. And so they have everything that was sold
7 in the U.S.

8 And so here's the issue we're having, Your Honor, is
9 that here we are, they're not saying that they haven't been
10 able to do anything that they would need to do to prove their
11 case without these other testing. The reality is we're through
12 expert discovery almost, they have all the U.S. data, that's
13 not what the order says. I won't go through it ad nauseam with
14 you, Your Honor, because our briefing is very clear. But the
15 order says that in terms of the testing documents, the parties
16 were to meet and confer and come up with a workable set of
17 documents. We've attached to our brief the letter between my
18 -- the email between my colleague and Mr. Parekh where my
19 colleague makes it clear that all of the nitrosamine testing
20 records have been produced. That has been -- those documents
21 were produced since last year in August. The fact that this
22 only came up recently shows that this is -- they have zero
23 interest in actually looking at these documents or using them
24 for a purpose, they just see that there's a bunch of documents
25 that would cost a lot of -- cost us a lot of money to produce.

1 And to be clear, Your Honor, this is a set of documents that
2 would cost millions of dollars to produce, millions. These are
3 in hard copy. Per the ESI protocol they have to be manually
4 entered, a set of very long metadata that is manually entered
5 by a person. This is all stuff that has never, ever been sold
6 in the United States. It's not even things that the FDA
7 wanted. What use could the plaintiffs possibly have for them
8 that are proportional to the needs of this case?

9 And what is really troubling to me, Your Honor, is, you
10 know, they insisted that they had to have the underlying test
11 results, right, for everything that went to the U.S., and we
12 did that, and it cost us millions of dollars to do all of that
13 because it's paper, and it's intensive, and it has to be
14 scanned, and then the metadata has to be manually entered. And
15 they've had that since last summer, and by my conversations
16 with the plaintiffs in the meet and confer, they never even
17 looked at it. Even though it's clearly marked nitrosamine
18 testing records, even though they insisted on having it last
19 summer and we spent a huge amount of time and resources to get
20 it to them quickly, because Judge Schneider allowed them to
21 prioritize certain discovery and we abided by that. So to come
22 now a year later saying, oh, wait, we want everything else, we
23 can only infer it's purely for harassment. And I don't use
24 that word lightly, Your Honor, but this is beyond -- I mean,
25 they have been on notice of what we produced in terms of these

1 testing records for a year. You know, when Mr. Ferretti sent
2 that email to Mr. Parekh, there is no email they'll show you
3 where Mr. Parekh says, no, you're missing this, we need all of
4 the entire world, it's crucial to our case, because that was
5 the agreement. They knew exactly what they were getting and
6 they got it. And so to bring this up now is incredibly
7 prejudicial to my client and Mr. Slater has yet to articulate a
8 reason he needs it.

9 JUDGE VANASKIE: All right.

10 MR. SLATER: Your Honor --

11 JUDGE VANASKIE: Brief rebuttal, Mr. Slater.

12 MR. SLATER: Yes, sure. Your Honor, you already
13 ordered this. You already ordered it because during the
14 depositions we saw in the document a representation that 7,000
15 batches had been tested, and we didn't just bring this up now.
16 Your Honor entered the order in May, which means our briefing
17 predated it, the issue was being discussed for weeks and weeks
18 before that, in the context of the depositions when we met and
19 conferred with the defense and said, hey, where are these 7,000
20 batches of testing, we don't see it. And we went back and
21 forth and we've never been produced it, and counsel
22 acknowledges they haven't given that to us. So I'm not going
23 to go back and reargue the merits because Your Honor's already
24 ordered this. So we just ask that they be ordered to comply
25 with your order from May 11 please.

1 MS. PRISELAC: Your Honor --

2 MR. PAREKH: Your Honor, this is Behram --

3 JUDGE VANASKIE: Hold on, hold on, Ms. Priselac. I'll
4 hear from Mr. Parekh.

5 MR. PAREKH: Your Honor, the email which Ms. Priselac
6 refers to, there seems to be a disconnect in what she is
7 talking about and what we're asking for.

8 The email that she's referring to refers to the actual
9 manufacturing batch records and the testing done during that
10 manufacturing process. What we're asking for is the testing
11 done of nitrosamine contamination of batches that were tested
12 by ZHP. Those are two completely separate things. The testing
13 that was done during the manufacturing process and the batch
14 records that are referred to in the emails, the white, blue and
15 yellow text, have nothing to do with the post-recall testing
16 done by ZHP of batches of DMF regardless of where it went. And
17 Judge Schneider's order was clear that it didn't matter where
18 the batches went to, the issue was where were they
19 manufactured. And if they were manufactured in a facility that
20 went -- that also manufactured batches that went to the U.S.,
21 those tests of nitrosamine in those batches were required to be
22 produced. So we are talking about two separate issues here.

23 JUDGE VANASKIE: All right. Ms. Priselac?

24 MS. PRISELAC: Thank you, Your Honor.

25 You know, there is a discussion of the batch testing

1 records in that email, but that email is very clear. Mr.
2 Parekh asks Mr. Ferretti, do you have -- "Have you produced" --
3 and this is September 13th, 2020, a year ago, "Have you already
4 produced a hundred percent of the retrospective testing results
5 chromatography or is it still being produced? I can't remember
6 what you told me." Mr. Ferretti says, "It's already been
7 produced." He gives him the specific production volume and he
8 explains that there was a correction and so that there had to
9 be a little bit of an overlay, which is why it was late,
10 because, you know, Your Honor, Judge Schneider did produce it
11 -- order that it be produced earlier, these records, and they
12 were produced.

13 So to say now, a year later, oh, that's not what we
14 wanted, I mean, it really belies what they're attempting to do
15 here, Your Honor. Because the reality is, first Mr. Slater
16 says, oh, Judge Schneider ordered it, then his argument is that
17 you ordered it.

18 If we want to go back to the meet and confer that
19 happened more recently, I was extraordinarily clear, and I'm
20 happy to go back to my emails and notes, if we're going to make
21 that argument, that my client was not going to produce
22 thousands of documents, additional documents, at a cost of, you
23 know, potentially billions of dollars. I said what I would do
24 is go back to my client to see if they had a more detailed
25 summary rather than the underlying raw data. Under no

1 circumstances did you order or did I agree to do that.

2 And the order he's referring to, Your Honor, was the
3 order you initially entered that was based upon the parties'
4 agreement. And so if that's the order he's talking about, he
5 well knows that ZHP and I never agreed to that, Your Honor.

6 JUDGE VANASKIE: All right. And you're referring to
7 Exhibit P, that's the email exchange with Mr. Ferretti?

8 MS. PRISELAC: That's right, Your Honor. And I'm also
9 referring to, let me get it out --

10 JUDGE VANASKIE: What order are you referring to? I'm
11 looking at things now as we're talking.

12 MS. PRISELAC: Well, I would love to know what order
13 -- I mean, Mr. Slater says that there's an order we violated.

14 JUDGE VANASKIE: May 11 he said.

15 MS. PRISELAC: That order, you remember, Your Honor,
16 was the one that you entered after we had said we had come to a
17 number of agreements in our status report.

18 JUDGE VANASKIE: What I'm looking at right now is
19 Special Master Order 20.

20 MR. SLATER: Your Honor, actually, I think I may have
21 misspoken. I believe that it's ECF Document 1233 --

22 JUDGE VANASKIE: Okay.

23 MR. SLATER: -- which is -- oh, actually, no, it
24 should be that document. That is that document.

25 JUDGE VANASKIE: I just want to make sure we're all on

1 the same page.

2 I'm looking at Paragraph 7 of that order, Special Master
3 Order 20, which required the ZHP defendants to produce any
4 additional responsive and nonprivileged documents relating to
5 the -- related to the March 12, 2018, testing investigation of
6 Valsartan APA Batch Number, and then there is a batch number,
7 as well as any additional responsive and nonprivileged
8 documents relating to the batch testing referenced in Princeton
9 0075797. Are we on the same page?

10 MR. SLATER: That's the chart. Yes, we are, Your
11 Honor, and that's the chart that's transposed on Page 11 of our
12 brief.

13 JUDGE VANASKIE: Okay.

14 MS. PRISELAC: Right. Your Honor, and that was by
15 agreement, that order, and what we had agreed to do was go back
16 and look for additional underlying data for that chart, right,
17 because it's a summary chart and we said, look, this is a lot
18 of OUS, outside of U.S., product, but -- and to produce kind of
19 the raw underlying data for that chart would be extraordinarily
20 expensive. But if there -- if there is some kind of Excel
21 spreadsheet or something that's less cost prohibitive that
22 gives you this data, you know, we'll produce it, but I don't
23 know if it exists, I need to talk to my client. And then I
24 talked to them and they went back to their testing people to
25 see if there was something that wasn't all of the underlying

1 data that costs millions of dollars to produce and that was
2 something more akin to like a more detailed spreadsheet. The
3 problem is that doesn't exist. If they want that data, Your
4 Honor, it has to be produced in this form that's incredibly
5 expensive. And so when we talk about responsive data, our
6 position is that it wasn't responsive because it was not within
7 the Judge's order, and what we agreed to was to produce the
8 U.S. testing data.

9 MR. SLATER: I'm at a loss, Your Honor. It's in the
10 order and we've already gone through this. Judge Schneider's
11 Macro Orders said we're entitled to discovery from the
12 facilities that manufactured valsartan that was sold in the
13 U.S., okay? I'm not only asking -- and I never said only the
14 results relating to the valsartan actually sold in the U.S.
15 Judge Schneider was very clear, it's the full facility
16 regardless of where it went. And this was agreed to. You have
17 this chart, you can see it.

18 They say in their Deviation Investigation Report, and
19 that's where this is transposed from, I believe, this chart,
20 that there were 7,000 batches tested. We need those results.

21 MS. PRISELAC: Why?

22 MR. SLATER: We want to see what the levels were.

23 MS. PRISELAC: Your Honor, putting apart the fact that
24 if that is what Judge Schneider --

25 MR. SLATER: I'll tell you. I'll answer that.

1 Counsel asked a question.

2 JUDGE VANASKIE: Hold on, hold on.

3 MR. SLATER: I'll tell you. For example, let's --
4 what if the levels are much higher? Their experts are making
5 certain assumptions in their reports, and presumably in the
6 testimony we're going to get, as to what the levels of
7 contamination were. They didn't limit it just to the U.S.
8 They talked about the contamination and they rely on European
9 constitutes, European epidemiologic studies of contaminated
10 valsartan being taken in Europe, and they're relying on those
11 studies. So we certainly should have the right to see all of
12 the test results, the actual results, not just what was
13 compiled into a chart, and look into that and see whether or
14 not it's accurate and potentially use that later; because,
15 again, their experts are not just relying on data from the
16 U.S., they're relying on a lot of European studies. In fact,
17 two out of the three epidemiologic studies on actual valsartan
18 users were based on European usage, Germany and in Northern
19 Europe, I believe in the Netherlands, the Potagard study.

20 MS. PRISELAC: Well, Your Honor, there are no European
21 people -- there are no European citizens that are plaintiffs in
22 this action. So it's more than appropriate for an expert to
23 use a study from a different country without producing things,
24 you know, underlying test results that are related to consumers
25 -- products consumers took in a different country. I mean,

1 those two -- they're completely unrelated to one another, and
2 the fact that Mr. Slater could come up with that is -- I still
3 don't understand what the relevance would be, even after that
4 explanation. To have a European study have anything to do with
5 European consumers is just unrelated to this case.

6 And the reality is, Your Honor, they do have information
7 about the levels, the chart shows it. I mean why you would
8 need the underlying documentation of every graph, especially
9 from what I can tell, they haven't even -- let me just make
10 this point, Your Honor. Of all of the underlying data, testing
11 data, they insisted they needed for the USDMF-grade valsartan,
12 they haven't used any of it. So they insisted they needed all
13 of this raw data because it's so important to the case, it's
14 not cited in one of their expert reports, it's not cited
15 anywhere because they didn't use it, they didn't look at it. I
16 know that they didn't look at it because when I had a meet and
17 confer and told them where these documents were, they were
18 surprised. So this is clearly just a last-ditch attempt to try
19 to get us to increase our litigation expenses astronomically.

20 And I'll be really clear, Your Honor, if this was -- if
21 we had not come to this agreement and made it very clear with
22 Mr. Parekh, we would have gone to Judge Schneider and made a
23 motion for a protective order because my client, the amount of
24 expense involved here is so beyond what is proportional to this
25 case, especially when you're talking about underlying raw data

1 of API testing that -- for other countries when the plaintiffs
2 have just admitted they already have the summary data.

3 JUDGE VANASKIE: I guess what I'm having trouble
4 understanding, Ms. Priselac, is that Paragraph 7 of Special
5 Master Order 20 did direct you to produce any additional
6 responsive and nonprivileged documents relating to the batch
7 testing referenced in this chart, and I don't recall anybody
8 objecting to the terms of that order.

9 MS. PRISELAC: Well, let me make something clear, Your
10 Honor.

11 Number one, our position is that it's not responsive.
12 That order was entered, and I'm happy to go back, Your Honor,
13 and get all of the correspondence, that order was entered by
14 agreement because we had a meet and confer about what we would
15 and wouldn't produce. And what I made very clear is that under
16 no circumstances would my client spend millions of dollars at
17 this point in the litigation to produce underlying hard-copy
18 documents of testing for products that never were sold in the
19 U.S. I would have never made that agreement. And what we did
20 agree to go back is to see if there were somehow additional
21 documents that included outside of U.S. testing that were maybe
22 withheld because they weren't responsive that were a summary
23 that could satisfy the plaintiffs. That kind of summary
24 doesn't exist or else we would have produced it.

25 The only way to do this is to go back and scan a huge

1 amount of hard-copy data that I made very clear to Mr. Slater
2 and his colleagues my client would not agree to do.

3 JUDGE VANASKIE: All right.

4 MR. SLATER: Your Honor, I'll just bring one thing to
5 your attention that you can take a look at.

6 If you look at Judge Schneider's Macro Order November
7 25, 2019, it's Document 303, Paragraph 4 says, "Defendants
8 shall produce all documents reflecting the presence of any
9 nitrosamine in any sartan product. This includes not only
10 valsartan, but also losartan, irbesartan, olmesartan and
11 candesartan," which not only is relevant to this but harkening
12 back to the irbesartan report, that also is encompassed by this
13 order, because that's what this says, "any nitrosamine in any
14 sartan," so that irbesartan report was clearly relevant because
15 it was a report about nitrosamines in a sartan. And Paragraph
16 8 also says that, "Plaintiffs are entitled to discovery
17 regarding any tests that could identify any presence of
18 nitrosamine contamination," and it goes on, that's Paragraph 8.

19 So I just offer that to Your Honor because when counsel
20 says it's not responsive, it's not within the scope of this
21 case, Judge Schneider's Macro Order was very clear and was very
22 expansive.

23 JUDGE VANASKIE: All right.

24 MS. PRISELAC: The part about the Macro Order I do
25 want to emphasize, though, Your Honor, and you'll see it, is

1 that it also orders the parties to meet and confer about the
2 scope of the testing records, which is what we did. And if
3 they would have insisted that these records be produced, we
4 would have moved for a protective order. We have to be able to
5 meet and confer on these issues, Your Honor, because, I'm sure
6 you understand, a company of this size has huge amounts of
7 testing data. To say it all has to be produced would have been
8 completely impossible and certainly not economically feasible.

9 And Mr. Slater is, you know, talking about irbesartan,
10 losartan, candesartan, we absolutely have produced all of the
11 responsive documents in that order, which is why you do have
12 some irbesartan documents; but what you don't have, and why you
13 don't hear Mr. Slater saying we need all of the underlying
14 nitrosamine documentation for candesartan, losartan,
15 irbesartan, is because that's not what that paragraph means and
16 he knows it. Otherwise, he would have all of that data or be
17 moving to compel that and he's not.

18 JUDGE VANASKIE: All right. Very well. I'm going to
19 have to study this particular issue. I won't issue an order at
20 this time.

21 And at my peril and at your peril, too, I'll ask, is
22 there anything else we need to discuss today?

23 MS. PRISELAC: I just had a housekeeping issue, Your
24 Honor.

25 JUDGE VANASKIE: All right.

1 MS. PRISELAC: So how would you -- how would you like
2 me to submit the slides to you? Because, obviously, they do
3 have some restricted confidential information.

4 JUDGE VANASKIE: Well, I think you could send it to me
5 as a password-protected encrypted file by email to my Stevens
6 and Lee address.

7 MS. PRISELAC: Sure. I guess what I meant, I mean,
8 obviously, I think we've sent you restricted confidential
9 without a password before; but I mean in terms of making it --
10 it sounded like you wanted to make it part of the record.
11 Should I send you kind of a redacted portion also?

12 JUDGE VANASKIE: Yes, you can do that. I wasn't
13 intending to attach it to the transcript, if that's what you
14 mean.

15 MS. PRISELAC: Yes. Okay.

16 MR. SLATER: Your Honor, there was one other issue
17 which has to do with Baohua Chen productions. And, certainly,
18 you, at your peril, asked if there was any other issues; at my
19 peril, I say yes.

20 JUDGE VANASKIE: Okay.

21 MR. SLATER: I don't do that lightly. I'm texting my
22 certain people right now telling them I'm going to be not
23 making dinner, but this is important and I understand I have to
24 do this. So I'll try to keep this to the point with Baohua
25 Chen.

1 ZHP has confirmed that they withheld documents that they
2 say were produced through other custodians' productions but
3 he's not listed as a duplicate custodian in that metadata
4 field, so we would ask that those documents that were withheld
5 be produced.

6 JUDGE VANASKIE: All right.

7 MR. SLATER: That's number one.

8 JUDGE VANASKIE: Let's hear from Ms. Priselac on
9 number one before we get to number two.

10 MS. PRISELAC: I'm sorry, were there two? I thought
11 there was just one.

12 I guess I'm just confused what Mr. Slater means.

13 MR. SLATER: What I'm saying --

14 MS. PRISELAC: Yeah, I don't --

15 MR. SLATER: Okay, that's fine.

16 MS. PRISELAC: We have produced all of Mr. Chen's
17 documents that are responsive. We produced an overlay file to
18 make it clear what documents where he was also a duplicate
19 custodian, but I don't know what else he would like us to
20 produce.

21 MR. SLATER: What we would like is the documents that
22 were in Baohua Chen's custodial collection that were deemed
23 relevant and responsive that were not produced to us because
24 ZHP says they were produced through other custodians' custodial
25 productions, but since he is not listed as a duplicate

1 custodian, there's no way for us to know that. So we need the
2 documents --

3 MS. PRISELAC: There are no such documents.

4 MR. SLATER: I believe that that's what -- that's our
5 understanding. In fact, I'm looking at Ms. Priselac's email of
6 July 22nd, which is Exhibit 3 to our papers, in part says, and
7 this was an email to myself, "Accordingly, it should be no" --
8 "it should come as no surprise that documents that were
9 previously produced have not been produced again in duplicate
10 form."

11 We understand that, but since the metadata doesn't list
12 him as a duplicate custodian on those other productions, we
13 have no way to know those documents were in his custodial.
14 And, in fact, I'm not even sure if that would have even existed
15 at the time because he wasn't a custodian when a lot of those
16 custodial files were collected most likely. So we need the
17 documents because we need to know what documents were in his
18 file and without listing him as a duplicate custodian in
19 someone's custodial production, we have no way to link him to
20 the document.

21 MS. PRISELAC: So, Your Honor, I would love if Mr.
22 Parekh could weigh in because I know that he's an expert in
23 these issues but, you know, the overlay -- the overlay we've
24 provided, and I think we talked about extensively at the
25 beginning, corrects that issue. So there's nothing really I

1 can really do other than that.

2 Maybe I'm -- we're talking cross-purposes here, but the
3 overlay now has all of the duplicate custodian information
4 corrected. So I don't know what else I could possibly do.

5 MR. SLATER: I think we're going to have to meet and
6 confer on the overlay file, Your Honor.

7 JUDGE VANASKIE: Okay.

8 MR. SLATER: Because I've been emailing with my team
9 and I think there's going to have to be a discussion between
10 our team and ZHP's team and make sure we're all on the same
11 page, and maybe some of these issues can be resolved by going
12 through how things were loaded or how things appear in the
13 metadata, it doesn't seem clear to us, but I think it's
14 reasonable for us to talk to the defense on this issue.

15 JUDGE VANASKIE: I agree. And I would direct that you
16 meet and confer on this particular issue.

17 MR. SLATER: The rest of the issues with Baohua Chen,
18 I don't know that there's really much Your Honor can do at this
19 point other than perhaps what you've done before, because, I
20 mean, look, for example, at the small number of documents, it's
21 a concern. We also have a concern because you recall many
22 times we were told, well, there's going to be a lot of state
23 secret documents that are going to be -- we're going to have to
24 grapple with. They hit on over 4,000 documents that -- with
25 the search terms, we got either 300 or 600, and there was no

1 state secret log. All the sudden there was not one state
2 secret document.

3 I realize you're going to say, well, how do I know what
4 -- how do I doubt that there's something there? I don't know.
5 All we want to make sure is that belts and suspenders because
6 it just seems very contrary to what we were told for months and
7 it's a little bit -- you know, it leaves us at a little bit of
8 a loss on our end when there was no state secret issue with
9 Baohua Chen.

10 JUDGE VANASKIE: Well, I don't know that there's
11 anything that I can do right now on that particular issue.

12 MR. SLATER: Understood.

13 JUDGE VANASKIE: All right.

14 MR. SLATER: Understood. I just wanted to raise it.

15 There's one other issue, Your Honor, that I think I just
16 want to say this, and we don't have to discuss it further, but,
17 the plaintiffs have a very serious issue with sealing these
18 hearings and with ZHP continuing to assert confidentiality as
19 to documents. Again, it's not an issue we have to address now
20 but it's something I want to foreshadow that we believe at some
21 point very soon ZHP's going to need to file a formal motion if
22 they want to keep sealing hearings, and we really want to get
23 to the bottom of what's going on here.

24 For example, that document that they're going to send to
25 you as restricted confidential, there's nothing in it that

1 justifies confidentiality from our perspective. In fact, I
2 think Your Honor has ruled on very similar information and
3 ordered it produced.

4 So I just wanted to say this because we're very
5 uncomfortable with sealing these hearings and sealing so many
6 documents. Thank you.

7 JUDGE VANASKIE: All right. Ms. Priselac, did you
8 want to respond?

9 MS. PRISELAC: Well, Your Honor, you know, especially
10 today, you know, we get sometimes in this position and, you
11 know, unfortunately for us, we had to sit through weeks and
12 weeks of Mr. Slater mischaracterizing a document and not really
13 being able to defend ourselves by putting things up and walking
14 through like we did today. And so without this level of
15 confidentiality, something like that would never be possible
16 because, you know, the Irbesartan Improvement Project, you
17 know, in and of itself, certain people could read that title
18 and understand exactly how, you know, ZHP was trying to attempt
19 to improve a process of making API for irbesartan. And so I
20 think that for us, you know, we really felt hamstrung on
21 walking through this kind of delicate thing with Your Honor
22 and, you know, really were disadvantaged by having to just
23 listen to misinterpretations of this document rather than just
24 being able to look at it. And so that's why we felt like that
25 this was the more appropriate venue so that Your Honor could

1 actually see the document and we appreciate this opportunity.

2 JUDGE VANASKIE: Well, thank you for that. I am
3 concerned, I'll tell you, I don't have proceedings sealed
4 lightly. Certainly in my prior role, I took the fact that this
5 is a judicial proceeding, it should be open, very seriously and
6 we will be sensitive to that going forward. That's all I can
7 say right now.

8 We went much longer than I thought we would today, but
9 that happens sometimes, and we'll conclude for today. I'm not
10 going to ask is there anything else.

11 And I'll thank Camille very much for her -- I'm
12 struggling for the right word -- resilience and stamina,
13 stamina, and we will conclude for today.

14 (Off-the-record discussion.)

15 JUDGE VANASKIE: We had a discussion off the record
16 about sealing the transcript from today's arguments, from
17 today's proceeding. We should follow the rules that govern
18 sealing of transcripts. What I expect that to mean, and you
19 can correct me if I'm wrong, if I'm misstating the rules in New
20 Jersey, in New Jersey Federal Court, but I expect that a draft
21 of the transcript will be provided to counsel and counsel will
22 have an opportunity to designate those portions that they
23 believe should be sealed, and to the extent that a
24 determination must be made by me with respect to what gets
25 sealed, I'll make that determination.

1 We've heard from Mr. Slater that he does not believe
2 that any part of this needs to be sealed, and Ms. Priselac, I
3 understand, will have to review the transcript to identify
4 those parts that she considers need the protection of a sealing
5 order.

6 MS. PRISELAC: Thank you, Your Honor.

7 JUDGE VANASKIE: All right. Thank you.

8 MR. SLATER: Have a nice, pleasant weekend, everybody.

9 JUDGE VANASKIE: You, too. Thank you all very much.

10 Thank you. Bye-bye.

11 (The proceedings concluded at 5:45 p.m.)

12 -

13

14 I certify that the foregoing is a correct transcript
15 from the record of proceedings in the above-entitled matter.

16

17 /S/ Camille Pedano, CCR, RMR, CRR, CRC, RPR
18 Court Reporter/Transcriber

19 September 13, 2021

20 Date

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